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TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, ~~1901.~~ 1902.

No. ~~196~~ 214.

THE INTERSTATE COMMERCE COMMISSION, APPELLANT,

vs.

THE LOUISVILLE AND NASHVILLE RAILROAD COMPANY, THE WESTERN RAILWAY OF ALABAMA, AND THE ATLANTA AND WEST POINT RAILROAD COMPANY.

APPEAL FROM THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE FIFTH CIRCUIT.

FILED DECEMBER ~~23~~, 1901.
(~~19359~~.)

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1901.

No. 506.

THE INTERSTATE COMMERCE COMMISSION, APPELLANT,

vs.

THE LOUISVILLE AND NASHVILLE RAILROAD COMPANY, THE WESTERN RAILWAY OF ALABAMA, AND THE ATLANTA AND WEST POINT RAILROAD COMPANY.

APPEAL FROM THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE FIFTH CIRCUIT.

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Caption.

United States of America, fifth judicial circuit.

Pleas and proceedings had and done at a regular term of the United States circuit court of appeals for the fifth circuit, begun on the third Monday of November, 1900, and held in the court room of said court in the city of New Orleans.

Before the Honorable Don A. Pardee, the Honorable A. P. McCormick, and the Honorable David D. Shelby, United States circuit judges for the fifth judicial circuit.

THE LOUISVILLE AND NASHVILLE RAILROAD COMPANY, The Western Railway of Alabama, and the Atlanta and West Point Railroad Company, appellants,
vs.
THE INTERSTATE COMMERCE COMMISSION, APPELLEE. } 910.

Be it remembered that heretofore to wit, on the 2nd day of February, 1900, a transcript of the record from the circuit court of the United States for the southern district of Alabama was filed in the office of the clerk of said United States circuit court of appeals for the fifth circuit, in the words and figures following, to wit:

ORIGINAL BILL OF COMPLAINT AND EXHIBITS.

In the Circuit Court of the United States for the Southern District of Alabama.

THE INTERSTATE COMMERCE COMMISSION

versus In Equity, No. 207.

LOUISVILLE AND NASHVILLE RAILROAD COMPANY; WESTERN RAILWAY OF ALABAMA; ATLANTA AND WEST POINT RAILROAD COMPANY.

To the Circuit Court of the United States Sitting in Equity within and for the Southern District of Alabama:

Your petitioner, the Interstate Commerce Commission, which was created and established and now exists under and by virtue of an act of the Congress of the United States entitled "An Act to regulate Commerce," approved February 4, 1887, as amended by an act approved March 2, 1889, and as amended by an act approved February 10, 1891, and an act approved February 11, 1893, humbly complaining, showeth that the Louisville and Nashville Railroad Company is a corporation created, chartered, and existing under and by virtue of the laws of the State of Kentucky, having its principal office at Louisville, in said state; that the Western Railway of Alabama is a corporation, created, chartered, and existing under and by virtue of the laws of the State of Alabama, having its principal office at Atlanta, in the State of Georgia; and that the Atlanta and West Point Railroad Company is a corporation created, chartered and existing under and by virtue of the laws of the State of Georgia, having its principal office at Atlanta, in that State.

2 II. That the said Louisville and Nashville Railroad Company, Western Railway of Alabama, and Atlanta and West Point Railroad Company, defendants herein, were, on the 16th day of October, 1895, and ever since have

been and still are common carriers engaged in transportation of persons and property by railroad under joint through rates and as members of continuous through lines between points in different States of the United States, and particularly between New Orleans, in the State of Louisiana, and LaGrange, in the State of Georgia, and also between New Orleans, in the State of Louisiana and Hogansville, Newnan, Palmetto, Fairburn and Atlanta, in the State of Georgia, and as such common carriers and in respect to such transportation were, during all the time aforesaid, and still are, subject to the provisions of said act entitled "An act to regulate commerce," and the amendments thereto.

III. That heretofore, to-wit: on the 25th day of October, 1895, one Fuller E. Calloway, a citizen of and merchant doing business in the said City of LaGrange, in the State of Georgia, made and filed, under section 13 of said act to regulate commerce, a complaint or petition to the complainant herein, the Interstate Commerce Commission, alleging violations on the part of said defendants of certain provisions of said act, as at large and more fully appears in and by the said complaint or petition of said Calloway on file in the office of said Commission, a copy of whereof is hereunto annexed and made a part of this bill of complaint as Exhibit A hereto; and that a copy of said complaint or petition of said Calloway, Exhibit A hereto, attested by the secretary of said Interstate Commerce Commission, under the seal of said commission, was duly forwarded by said commission to each of the said defendants as required by section 13 of said act.

IV. That thereafterwards, to-wit: on the 5th day of December, 1895, the defendants, the said Louisville and Nashville Railroad Company, Western Railway of Alabama, and Atlanta and West Point Railroad Company, filed their joint and several answer to the said complaint, Exhibit A hereto, of said Calloway, as at large and more fully appears in and by said answer on file in the office of the complainant herein, said Commission, a copy of which answer is hereunto annexed and made a part of this bill of complaint as Exhibit B hereto.

V. That thereafterwards the said cause, being at issue upon the pleadings aforesaid, duly came on for investigation and hearing before the complainant, said Interstate Commerce Commission, at Atlanta, in the State of Georgia, on the 9th day of November, 1896, when said Fuller E. Calloway, complainant before said Commission, duly appeared, as well as the said defendants, the Louisville and Nashville Railroad Company, the Western Railway of Alabama, and the Atlanta and West Point Railroad Company.

VI. That at said hearing it was made to appear to the satisfaction of the complainant herein, the said Commis-
3 sion, that the defendants had violated the provisions of said act in certain respects, as alleged in the complaint or petition of said Callaway, marked "Exhibit A" hereto, and that the rates of said defendants complained of in the complaint or petition, Exhibit A hereto, from New Orleans to LaGrange, were excessive, unreasonable and unjust in themselves, and also relatively as compared with the rates charged by the defendants from New Orleans to Hogansville, Newnan, Palmetto, Fairburn and Atlanta, and subjected said Calloway and other merchants and dealers at LaGrange and vicinity and the traffic thereto to an undue and unreasonable prejudice and disadvantage, and gave undue and unreasonable preferences and advantages to merchants and dealers at Hogansville, Newnan, Palmetto, Fairburn and Atlanta, and to traffic thereto, and, further, that said rates were in violation of the rule of section 4 of said act, in that they were higher for the shorter haul to LaGrange than for the longer haul through LaGrange over the same line and in the same direction to Hogansville, Newnan, Palmetto and Fairburn.

VII. That thereafterwards, to-wit: on the 31st day of December, 1897, the complainant, said Commission, duly and legally determined the matters and things, as aforesaid, in controversy and at issue between the said parties before it, and made a report in writing in respect thereof, which included the findings of fact upon which the said conclusions of the said Commission were based, as at large and more fully appears in and by the report of said Commission, on file in the office of the said Commission, a copy whereof is hereunto annexed and made a part of this bill of complaint as Exhibit C hereto.

VIII. That thereafterwards and forthwith, upon the determination of the said cause as aforesaid, to-wit: on the 31st day of December, 1897, the complainant duly formulated an order and notice in relation to the matters and things stated and charged in the said petition, Exhibit A hereto, based upon the findings and determination of complainant with respect thereto, which said order now remains in full force and effect, a copy whereof is hereunto annexed and made a part of this bill of complaint as Exhibit D hereto.

IX. That thereafterwards the complainant, agreeably to the provisions of the law in that regard, duly caused a properly authenticated copy of its said report and opinion, Exhibit C hereto, together with a copy of the order and notice, Exhibit D hereto, to be delivered to each of the said defendants, and complainant shows that the said defendants, unmindful of their

duty in that regard, have, through their officers, servants and attorneys, wholly disregarded and set at naught said order of the Commission, Exhibit D hereto, and have wilfully and knowingly violated and disobeyed the same, and still do neglect and refuse to comply with the same, to-wit: as to their rates over their line through the southern judicial district of Alabama from New Orleans to LaGrange, and over said line from New Orleans to Hogansville, Newnan, Palmetto, Fairburn and Atlanta.

4 X. And the complainant charges that the rates complained of from New Orleans to LaGrange were at the date of said order, Exhibit D hereto, and are still, in violation of section 1 of the act to regulate commerce, in that they were and are excessive, unjust, and unreasonable in themselves; and that the rates complained of from New Orleans to LaGrange and to Hogansville, Newnan, Palmetto, Fairburn and Atlanta were, at the date of said order, Exhibit D hereto, and still are, relatively unjust and unreasonable, in that they gave and still give Hogansville, Newnan, Palmetto, Fairburn and Atlanta an undue preference or advantage over LaGrange, and are subjected and still subject LaGrange to an unjust prejudice or disadvantage, and are in violation of section 3 of the act to regulate commerce; and that said rates were at the date of said order, Exhibit D hereto, and still are in violation of section 4 of said act, in that they were and are higher for the shorter haul from New Orleans to LaGrange than for the longer haul over the same line through LaGrange to Hogansville, Newnan, Palmetto, Fairburn and Atlanta, the shorter haul to LaGrange being included within the longer haul to Hogansville, Newnan, Palmetto, Fairburn and Atlanta.

XI. Wherefore the complainant prays:

1. That a subpoena, or other suitable process may issue according to the course of equity, requiring the said Louisville and Nashville Railroad Company, Western Railway of Alabama, and Atlanta and West Point Railroad Company to appear at such time and place as this honorable Court may determine, then and there to make full, complete and perfect answer to all the matters and things hereinabove stated and charged, as fully and particularly as if each of the said defendants were specially interrogated in regard thereto, but not under oath, which is hereto waived.

2. That upon the filing of this petition an order may be made by this honorable Court directing the method of service of notice of the pendency of this proceeding.

3. That such order or orders may be passed pending the cause as will secure a speedy hearing and determination of the

matters and things stated and charged in the foregoing bill of complaint.

4. That such order or orders may be passed pending the cause as may be necessary for the prosecution of all such inquiries as the Court may think needful and lawful to enable it to form a just judgment of the matters and things stated and charged in the foregoing bill of complaint.

5. That an order may be entered pending the cause granting to the complainant a writ of injunction or other proper process, mandatory or otherwise, to restrain the said defendants and each of them, their and each of their officers, servants, and attorneys from further continuing in their violation of and disobedience to the said order of the complainant, and that upon final hearing such injunction may be made perpetual.

5 6. That a decree may be entered, if it shall seem meet to this Honorable Court, requiring the said defendants, or each of them, to pay such sum of money not exceeding $500 for every day after a day to be named in said decree that said defendants shall fail to obey the said injunction or other proper process.

7. For such other and further relief in the premises as to the Court may seem meet and equity may require.

THE INTERSTATE COMMERCE COMMISSION,
By EDW. A. MOSELY,
Secretary thereof thereunder duly authorized.

EXHIBIT "A."

Before the Interstate Commerce Commission.

Fuller E. Calloway, Complainant,
vs.
The Louisville and Nashville Railroad Company, the Western Railway of Alabama, the Atlanta and West Point Railroad Company, Defendants.

The petition of the above named complainant respectfully shows:

I. That complainant is engaged in business as a dealer in dry goods, groceries, and general merchandise at LaGrange, in the State of Georgia, and is a freight shipper or consignee of such goods and merchandise from New Orleans, in the State of Louisiana, to LaGrange aforesaid.

II. That the above named defendants are common carriers engaged in the transportation of passengers and property by continuous carriage or shipment, wholly by railroad, between

New Orleans in the State of Louisiana, and LaGrange and other points in the State of Georgia, and between various points in the States of Louisiana, Mississippi and Alabama and points in the State of Georgia, and as such common carriers the said defendants are subject to the provisions of the act to regulate commerce, approved February 4, 1887, and acts amendatory thereof or supplementary thereto.

III. That said defendants have heretofore established and do now charge, demand, collect and receive from complainant and other shippers or consignees rates per hundred pounds for the through transportation of various classes or kinds of freight articles from New Orleans aforesaid to LaGrange, Hogansville, Newnan, Palmetto and Fairburn, in the State of Georgia, as set forth in the following table, to-wit:

From New Orleans, La.

To—	Dis. tance Miles	Classes. 1. Cts.	2. Cts.	3. Cts.	4. Cts.	5. Cts.	6. Cts.	A. Cts.	B. Cts.	C. Cts	D. Cts	E. Cts.	H. Cts.	F. Cts.	Special sugar Cts.
La Grange	424	143	124	109	93	74	59	41	48	33.5	29	66	78	59	38
Hogansville	437	139	121	107	90	73	57	39	46	33	28.5	65	75	58	36
Newnan	456	135	114	101	86	70	55	37	44	32.5	27.5	62	71	56.5	34
Palmetto	470	127	110	97	82	66	54	36	43	31.5	26.5	58	67	55	33
Fairburn	477	125	108	95	79	65	53	35	42	31	26	57	64	54	32

6 IV. That said rates per hundred pounds from New Orleans to LaGrange yield the defendants rates per ton for each mile of haul ranging from over 1 1-3 cents on the lowest rate to nearly 6 3-4 cents on the highest or Class A rate, and are excessive, unreasonable and unjust charges for the services rendered, both in themselves and relatively, as compared with rates charged by defendants from New Orleans to Hogansville, Newnan, Palmetto and Fairburn, above mentioned, and with rates in force over defendants' roads from New Orleans to other localities. That said rates charged by defendants from New Orleans to LaGrange and other points unjustly discriminate against the complainant and others, the City of LaGrange and vicinity, and traffic thereto, and subject merchants and dealers therein to undue and unreasonable prejudice and disadvantage to merchants and dealers at Hogansville, Newnan, Palmetto, Fairburn and other localities and traffic consigned thereto. And complainant alleges that the rates charged by defendants as aforesaid are in violation of sections 1, 2 and 3 of said act to regulate commerce.

V. That said rates charged and collected by defendants from New Orleans to LaGrange, Hogansville, Newnan, Palmetto and Fairburn give them greater compensation in the aggregate for the transportation of like kind of property under substantially similar circumstances and conditions for the shorter distance from New Orleans to LaGrange than for the longer distance over the same line in the same direction from New Orleans to Hogansville, Newnan, Palmetto or Fairburn, and are in violation of section 4 of said act to regulate commerce.

Wherefore complainant prays that said defendants be required to answer the charges herein, and that, after due hearing and investigation, an order be made commanding the defendants and each of them to cease and desist from the aforesaid violations of said act to regulate commerce, and to establish and charge transportation rates from New Orleans to LaGrange not in excess of charges which may be found reasonable, just and lawful in this proceeding, and for such other and further order or orders as the Commission may deem necessary or just in the premises. FULLER E. CALLOWAY, Per C.

State of Georgia,
Troup County, ss.

Fuller E. Calloway, being duly sworn, says that he is the complainant in this proceeding, and that the matters set forth in the foregoing petition are true as he verily believes.

FULLER E. CALLOWAY.

Subscribed and sworn to before me this 16th day of October, 1895. W. H. NEWSOM,
[Seal] Notary Public.

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7 EXHIBIT " B."

The Joint and several answer of the Louisville and Nashville Railroad Company, the Western Railway of Alabama and the Atlanta and West Point Railroad Company to the complaint filed before the Interstate Commerce Commission by Fuller E. Calloway against said respondents:

I. Respondents suppose it to be true that complainant is engaged in business as a dealer in dry goods, groceries and general merchandise at LaGrange, in the State of Georgia, and that he is a freight shipper or consignee of such goods or merchandise from New Orleans in the State of Louisiana, to LaGrange aforesaid.

II. Respondents admit that each of them is a common carrier, and that they are severally engaged in the transportation of passengers and property, wholly by railroad, between New Orleans, in the State of Louisiana, and LaGrange and other points in the State of Georgia, and between various points in the States of Louisiana, Mississippi and Alabama, and points in the State of Georgia. Such transportation is, in some instances, by continuous carriage, but in other instances the carriage is not continuous, and in no instance is there any contract that the carriage shall be continuous.

Each of the respondents is a corporation separate and distinct from the others, and no two of respondents are under any common management, control or arrangement. Whether respondents are subject to the provisions of the act to regulate commerce is a question of law which is respectfully submitted to the honorable Commission.

III. Respondents admit that they have heretofore established, and do now charge, demand, collect and receive from shippers or consignees certain rates per 100 pounds for the through transportation of various classes or kinds of freight articles from New Orleans, aforesaid, to LaGrange, Hogansville, Newnan, Palmetto and Fairburn, in the State of Georgia.

Respondents admit that said rates are correctly set forth in the third section of the complaint, with the exception that the rate to LaGrange on Class 4 is 74 instead of 78 cents; the rate to Newnan on class 1 is $1.33 instead of $1.35, and on Class C is 32 instead of 32.5 cents.

IV. Respondents admit that said rates per 100 pounds from

New Orleans to LaGrange yield respondents rates per ton for each mile of haul ranging from 1.36 cents on the lowest, class (D), to 6.71 cents on the highest class (1); but respondents deny that any of the said rates are excessive, unreasonable or unjust charges for service rendered, either in themselves, or as compared with rates charged by respondents from New Orleans to Hogansville, Newnan, Palmetto or Fairburn, aforesaid, or as compared with rates in force over respondents' roads from New Orleans to other localities, provided that transportation to such other localities is conducted under circumstances and conditions substantially similar to those under which the transportation from New Orleans to LaGrange is conducted.

Respondents deny that any of said rates charged by respondents from New Orleans to LaGrange as compared with rates charged by them from New Orleans to other points, are unjustly discriminative against complainant, or any other person, or against the City of LaGrange or its vicinity, or the traffic thereof.

Respondents deny that any of said rates subject merchants or dealers at LaGrange to any undue or unreasonable prejudice or disadvantage, or that they give any undue or unreasonable preference or advantage to merchants or dealers at Hogansville, Newnan, Palmetto, Fairburn or other localities, or to traffic consigned thereto.

Respondents deny that any of said rates violate section 1 or 2 or 3 of the act to regulate commerce.

V. Respondents admit that said rates charged and collected by them from New Orleans to LaGrange give them greater compensation in the aggregate for the transportation of like kind of property for the shorter distance from New Orleans to LaGrange than for the longer distance, over respondents' roads in the same direction, from New Orleans to Hogansville, Newnan, Palmetto or Fairburn; but respondents deny that the transportation of property from New Orleans to LaGrange is conducted under substantially similar circumstances and conditions with the transportation of property from New Orleans to either Hogansville, Newnan, Palmetto or Fairburn; and therefore respondents deny that said rates are in violation of section 4 of said act to regulate commerce.

VI. Respondent, the Louisville and Nashville Railroad Company, operates a railroad from New Orleans, La., to Montgomery, Ala. Respondent, the Western Railway of Alabama, operates a railroad from Montgomery, Ala., to West Point, Ga. And respondent, the Atlanta and West Point Railroad Company, operates a railroad from West Point to Atlanta, Ga.

LaGrange, Hogansville, Newnan, Palmetto and Fairburn are all stations situated on the Atlanta and West Point Railroad between Montgomery, Ala., and Atlanta, Ga.

Beginning at Montgomery and going east—

LaGrange is 104 miles from Montgomery.

Hogansville is 117 miles from Montgomery.

Newnan is 136 miles from Montgomery.

Palmetto is 150 miles from Montgomery.

Fairburn is 157 miles from Montgomery.

9 Freight shipped from New Orleans, over the several above-described roads of respondents, destined to LaGrange, would, if rates could be controlled by distance alone, be charged lower rates than freight shipped from New Orleans to any other one of said local stations. In fact, the rates from New Orleans to said local stations, respectively, would increase as their respective distances from New Orleans increase, provided the distance which such freight is carried could operate as a controlling factor in making said rates.

If it were possible in that section of the country to adjust freight rates on the basis of distance alone, the rates from New Orleans to said local stations would be made by adding the rates from New Orleans to Montgomery to the rates from Montgomery to said local stations, respectively.

The following table A shows what said rates would be if it were possible for respondents to use distance as a controlling factor in making said rates:

Rates from New Orleans, La., to certain local stations on the Atlanta and West Point Railroad, arrived at by adding Rates from New Orleans, La., to Montgomery, Ala., to Rates from Montgomery to said Local Stations:

	Classes, rates per 100 pounds												Per barrel.
	1.	2.	3.	4.	5.	6.	A.	B.	C.	D.	E.	H.	F.
New Orleans to Montgomery...	94	88	74	59	48	37	24	27	20	16	44	29	32
Montgomery to La Grange.. ..	75	65	59	45	38	31	31	33	27	22.5	41	45	52.5
New Orleans to LaGrange.	169	153	133	104	86	68	55	60	47	38.5	85	74	84.5
New Orleans to Montgomery...	94	88	74	59	48	37	24	27	20	16	44	29	32
Montgomery to Hogansville.. .	81	70	63	51	41	33	33	35	28.5	23.5	44	51	55
New Orleans to Hogansville.	175	158	137	110	89	70	57	62	48.5	39.5	88	80	87
New Orleans to Montgomery...	94	88	74	59	48	37	24	27	20	16	44	29	32
Montgomery to Newnan..	88	77	70	56	46	35	35	37	25.5	24	49	56	51
New Orleans to Newnan...	182	165	144	115	94	72	59	64	45.5	40	93	85	83
New Orleans to Montgomery...	94	88	74	59	48	37	24	27	20	16	44	29	32
Montgomery to Palmetto.... ..	91	80	72	58	47	36	36	38	30	25.5	46	58	58
New Orleans to Palmetto..	185	168	146	117	95	73	60	65	50	41.5	90	87	90
New Orleans to Montgomery...	94	88	74	59	48	37	24	27	20	16	44	29	32
Montgomery to Fairburn..	95	83	74	60	48	38	36	40	30.5	26	45	60	59
New Orleans to Fairburn..	189	171	148	119	96	75	60	67	50.5	42	89	89	91

It will be noticed that the rates which respondents would realize if it were possible to base said rates upon distance alone would be very materially higher than the rates now actually charged by them, and which are shown in section 3 of the complaint. It would therefore be manifestly to the advantage of respondents to base said rates on distance alone, if it were possible for them to do so.

Respondents will now show why it is not possible to base said rates on distance alone, and why respondents are compelled to accept rates which are very much lower than they would be if respondents could utilize distance as a controlling factor.

VII. Atlanta, Ga., is the pivotal point for the purpose of rate making into and out of the territory south of the Ohio river and east of the Mississippi river.

Every class of freight that is shipped from New Orleans, through Montgomery to LaGrange, Hogansville, Newnan, Palmetto and Fairburn is also shipped to said stations, through Atlanta, from Baltimore, Philadelphia, New York, Boston and other supply markets in the northeast.

The rates on every class of freight from Baltimore and other northeastern supply markets to Atlanta are controlled by the low rates accepted by steamships and sailing vessels from Baltimore to Savannah and by steamboats on the Savannah river from Savannah to Augusta, added to rail rates established by the Georgia railroad commission from Augusta to Atlanta.

Baltimore and the other northeastern supply markets compete with each other for the trade of Atlanta; and numerous carriers whose lines extend from Baltimore and other northeastern supply markets to Atlanta, compete with each other for the carriage of the traffic passing between said points. Some of said carriers are part rail and part water, and some of them are all rail.

The competition between Baltimore and other northeastern supply markets, as well as the competition between the numerous carriers whose lines extend from said markets to Atlanta, is active, aggressive, and effective.

VIII. Cincinnati, Ohio, and Louisville, Ky., are important supply markets, situated on the Ohio river. And they have lines of railway which extend to Atlanta.

Every class of freight that is shipped from New Orleans, through Montgomery to LaGrange, Hogansville, Newnan, Palmetto and Fairburn, is also shipped to said stations through Atlanta, from Cincinnati, Louisville and other supply markets on the Ohio river.

Cincinnati, Louisville and other Ohio River supply markets

not only compete with each other, but they also compete with Baltimore and other northeastern supply markets for the trade of Atlanta. And all various rail carriers whose lines extend from Cincinnati and from Louisville to Atlanta not only compete with each other for the carriage of traffic passing between the Ohio river and Atlanta, but they use every effort to induce Atlanta to purchase her supplies in the northwest, so that they may secure the carriage of them. The result is that there is active, aggressive and effective competition as between the carriers whose lines extend from Cincinnati, Louisville and other Ohio river supply markets to Atlanta as against the carriers whose lines extend from Baltimore and other northeastern supply markets to Atlanta.

IX. New Orleans is situated on the Mississippi river, with deep water navigation to the ocean. There are also a number of railways centering at that point. The result is that New Orleans is an important supply market, and her mer-
11 chants naturally desire to compete in Atlanta with Baltimore and the other northeastern supply markets, as well as with Cincinnati, Louisville and other Ohio river supply markets.

In order to enable the New Orleans merchants to compete in Atlanta market, it becomes absolutely necessary that respondents and other rail carriers whose roads extend from New Orleans to Atlanta shall offer approximately as low rates on the various classes of freight as are accepted by the carriers whose lines extend from Baltimore and other northeastern supply markets to Atlanta, or as are accepted by the carriers whose lines extend from Cincinnati, Louisville and other Ohio river supply markets to Atlanta.

If respondents and the other carriers whose roads extend from New Orleans to Atlanta should materially increase the rates between those points it would be impossible for the New Orleans merchants to sell in the Atlanta market in competition with the merchants of Baltimore and other northeastern supply markets, or in competition with the merchants of Cincinnati, Louisville and other Ohio river supply markets.

Such an increase of rates would not only drive New Orleans out of the Atlanta market, but it would also prevent respondents and other carriers from getting any traffic for carriage from New Orleans to Atlanta.

X. From the foregoing statement it will be seen that the rates which can be obtained by respondents for the transportation of the various classes of freight from New Orleans to Atlanta are absolutely compelled by the following competitive circumstances and conditions, viz:

First. Competition of markets.

(a) The competition between Baltimore and the other northeastern supply markets as against each other for the trade of Atlanta.

(b) The competition between Cincinnati, Louisville and other Ohio river supply markets as against each other for the trade of Atlanta.

(c) The competition of Baltimore and other northeastern supply markets as against Cincinnati, Louisville and other Ohio river supply markets, and against New Orleans as a supply market, for the trade of Atlanta.

Second. Competition between carriers.

(a) The competition as against each other, of the various carriers whose lines extend from Baltimore and other northeastern supply markets to Atlanta.

(b) The competition, as against each other, of the various carriers whose lines extend from Cincinnati, Louisville and other Ohio river supply markets to Atlanta.

(c) The competition as against each other of the various carriers whose lines extend from New Orleans to Atlanta.

(d) The competition, as against each other, of the several classes of carriers above designated as a, b and c.

The competitive circumstances and conditions above
13 referred to have existed for many years, and have resulted in establishing certain relative rates between said various supply markets and the City of Atlanta. The relation existing between said rates is as follows:

First. The rates on the numbered classes from Boston, New York and Philadelphia to Atlanta are certain fixed differentials higher than the rates from Baltimore to Atlanta.

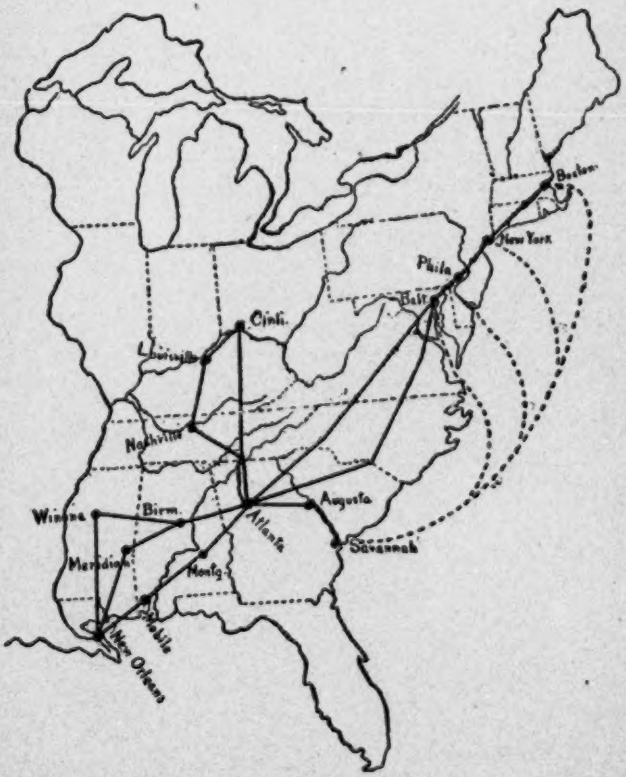
Second. The rates on the numbered classes from Cincinnati and from Louisville to Atlanta are made as low as the rates from Baltimore to Atlanta.

Third. The rates on the numbered classes from New Orleans to Atlanta are made 4 cents per 100 pounds less than the rates from Cincinnati and from Louisville to Atlanta.

The relation existing between said rates is the result of frequent and disastrous rate wars between the rival carriers in the past; and any attempt to disturb said relation would immediately lead to a repetition of such wars.

The following diagram (No. 1) sufficiently represents the relative position of said various supply markets, with reference to Atlanta; and it also shows the lines of some of the competing carriers which extend from said supply markets, respectively, to Atlanta:

DIAGRAM No. 1



A glance at said diagram, in connection with the relative adjustment of rates above referred to, will show that it is impossible to increase the rates from New Orleans to Atlanta without driving New Orleans and her carriers out of the Atlanta market, unless the rates from said other supply markets to Atlanta shall be increased correspondingly.

XI. The same competitive circumstances and conditions above referred to have also resulted in establishing similar relations between the rates from said various supply markets, respectively, to the City of Montgomery, and between the rates from said supply markets respectively, to Atlanta, as compared with the rates from the same markets to Montgomery.

The following Table B will show the relation which has been established between the rates from New Orleans to Montgomery and the rates from New Orleans to Atlanta:

Table B—Rates from New Orleans to Montgomery, as compared with rates from New Orleans to Atlanta.

	Classes												
	1.	2.	3.	4.	5.	6.	A.	B.	C.	D.	E.	H.	F.
New Orleans to Montgomery...	94	88	74	59	48	37	24	27	20	16	44	29	32
New Orleans to Atlanta.... ..	103	88	77	64	52	42	24	31	24	20	44	49	40

14 It is impossible to increase the rates from New Orleans to Atlanta without making a corresponding increase in the rates from New Orleans to Montgomery, as to do so would give to Montgomery an undue advantage of Atlanta in the competition which has for many years existed between these two cities as rival markets of consumption.

XII. The relation which exists between the rates from New Orleans to Montgomery, and the rates from New Orleans to Atlanta, having been established by the competitive circumstances and conditions above referred to, local noncompetitive stations, such as La Grange, Hogansville, Newnan, Palmetto, and Fairburn, located between Montgomery and Atlanta, have the choice of rates made by adding the rates from New Orleans to Montgomery to the rates from Montgomery to said stations, respectively (as shown in Table A), or made by adding the rates from New Orleans to Atlanta to the rates from Atlanta to those stations, respectively (as shown below in Table C).

Table C.—Rates from New Orleans to certain local stations on the Atlanta and West Point Railroad, arrived at by adding rates from New Orleans, La., to Atlanta, Ga., to rates from Atlanta to said local stations:

	Classes.												
	1.	2.	3.	4.	5.	6.	A.	B.	C.	D.	E.	H.	F.
New Orleans to Atlanta	103	88	77	64	52	42	24	31	24	20	44	49	40
Atlanta to LaGrange	40	36	32	29	22	17	17	17	9.5	9	22	..	19
New Orleans to LaGrange	143	124	109	93	74	59	41	48	33.5	29	66	74	59
New Orleans to Atlanta	103	88	77	64	52	42	24	31	24	20	44	49	40
Atlanta to Hogansville	36	33	30	26	21	15	15	15	9	8.5	21	26	18
New Orleans to Hogansville	139	121	107	90	73	57	39	46	33	28.5	65	75	58
New Orleans to Atlanta	103	88	77	64	52	42	24	31	24	20	44	49	40
Atlanta to Newnan	30	26	24	22	18	13	13	13	8	7.5	18	22	16.5
New Orleans to Newnan	133	114	101	86	70	55	37	44	32	27.5	62	71	56.5
New Orleans to Atlanta	103	88	77	64	52	42	24	31	24	20	44	49	40
Atlanta to Palmetto	24	22	20	18	14	12	12	12	7.5	6.5	14	18	15
New Orleans to Palmetto	127	110	97	82	66	54	36	43	31.5	26.5	58	67	55
New Orleans to Atlanta	103	88	77	64	52	42	24	31	24	20	44	49	40
Atlanta to Fairburn	22	20	18	15	13	11	11	11	7	6	13	15	14
New Orleans to Fairburn	125	108	95	79	65	53	35	42	31	26	57	64	54

A comparison between Tables A and C will show that lower rates to La Grange, Hogansville, Newman, Palmetto, and Fairburn can be obtained from New Orleans via Atlanta than via Montgomery.

Such a comparison is made in the following Table D:

Table D.—Rates from New Orleans, La., to certain local stations on the Atlantic and West Point Railroad, via Montgomery, compared with rates from New Orleans to said local stations via Atlanta:

	Per bar-rel.	100 pounds.										
	1.	2.	3.	4.	5.	6.	A.	B.	C.	D.	E.	H.	F.
New Orleans to LaGrange, via Montgomery	.169	153	133	104	86	68	55	60	47	38.5	85	74	84.5
New Orleans to LaGrange via. Atlanta	.143	124	109	93	74	59	41	48	33.5	29	66	74	59
Difference, favor Atlanta	26	29	24	11	12	9	14	12	13.5	9.5	19	—	25.5
New Orleans to Hogansville, via Montgomery	.175	158	137	110	89	70	57	62	48.5	39.5	88	80	87
New Orleans to Hogansville, via Atlanta	.139	121	107	90	73	57	39	46	33	28.5	65	75	58
Difference, favor Atlanta	36	37	30	20	16	13	18	16	15.5	11	23	5	29
New Orleans to Newnan, via Montgomery	.182	165	144	115	94	72	59	64	45.5	40	93	85	83
New Orleans to Newnan, via Atlanta	.133	114	101	86	70	55	37	44	32	27.5	62	71	56.5
Difference, favor Atlanta	49	51	43	29	24	17	22	20	13.5	12.5	31	14	27.5
New Orleans to Palmetto, via Montgomery	.185	168	146	117	95	73	60	65	50	41.5	90	87	90
New Orleans to Palmetto, via Atlanta	.127	110	97	82	66	54	36	43	31.5	26.5	58	67	55
Difference, favor Atlanta	58	58	49	35	29	19	24	22	18.5	15	32	20	35
New Orleans to Fairburn, via Montgomery	.189	171	148	119	96	75	60	67	50.5	42	89	89	91
New Orleans to Fairburn, via Atlanta	.125	108	95	79	65	53	35	42	31	26	57	64	54
Difference, favor Atlanta	64	63	53	40	31	22	25	25	19.5	16	32	25	37

Merchants at La Grange, Hogansville, Newnan, Palmetto, and Fairburn, respectively, have choice of rates from New Orleans via Montgomery or via Atlanta; but as the rates via Atlanta are the lowest, respondents have adopted those rates as being most to the advantage of said merchants.

XIII. The reason that the rates from New Orleans via Atlanta to La Grange are higher than the rates to Hogansville, Newnan, Palmetto, or Fairburn is that La Grange, while nearer to New Orleans, is farther from Atlanta than any other of said local stations.

If the rates from New Orleans to said local stations were made via Montgomery instead of via Atlanta, while the rates to La Grange would be lower than the rates to any other of said stations, yet the rates from New Orleans to La Grange would be higher than the rates which respondents now charge to La Grange.

The distance from Atlanta to Fairburn is 18 miles.

The distance from Atlanta to Palmetto is 25 miles.

The distance from Atlanta to Newnan is 39 miles.

The distance from Atlanta to Hogansville is 58 miles.

The distance from Atlanta to La Grange is 71 miles.

The rates from Atlanta to those stations, respec-
16 tively, are fixed by the Georgia Railroad Commission, and are just and reasonable.

The rates from New Orleans to Atlanta are fixed by the competition between markets and the competition between carriers, as explained above, and are just and reasonable.

The rates charged by respondents are the sum of those rates, and therefore respondents' rates themselves are just and reasonable.

The reason that Fairburn, Palmetto, Newnan, and Hogansville have lower rates from La Grange is due alone to the fact that they are nearer to Atlanta and not to any favoritism or discrimination on the part of respondents.

XV. The principal competitors of respondents between New Orleans and Atlanta are:

First. The Illinois Central Railroad to Winona, and the Southern Railway from Winona to Atlanta; a total distance of 646 miles.

Second. The New Orleans and Northwestern Railroad to Meridian; the Alabama and Great Southern Railroad from Meridian to Birmingham; and the Southern Railway from Birmingham to Atlanta; a total distance of 526 miles.

The distance from New Orleans to Atlanta, by respondents' roads, is 495 miles, or only 31 miles less than by the second route above described.

Said first and second routes are both in active and constant

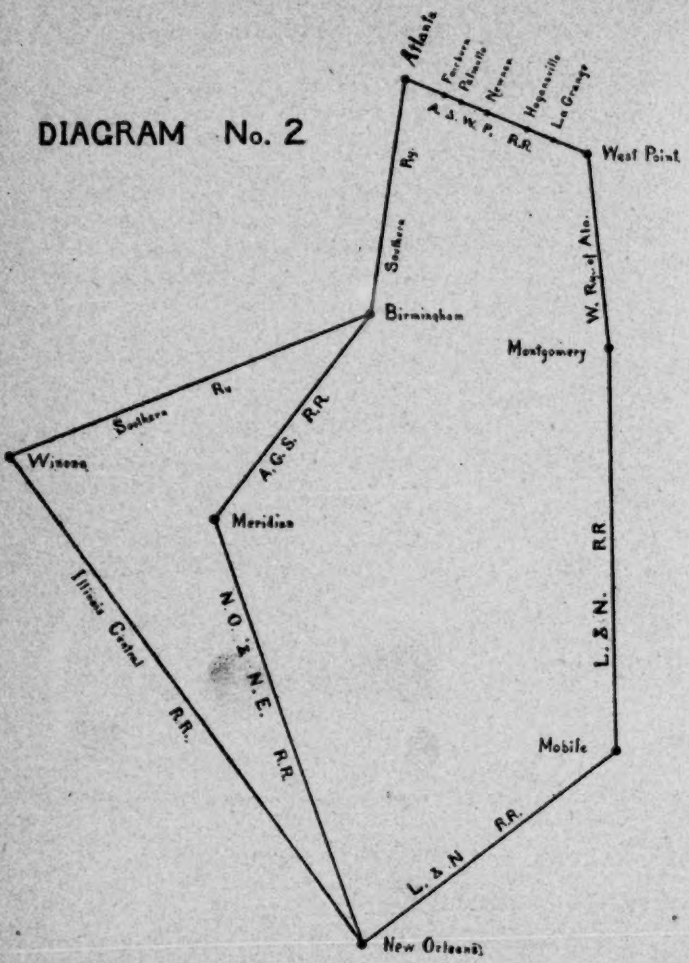
competition with respondents; and they carry all classes of freight from New Orleans to Atlanta at the same rates as are charged by respondents.

If respondents should attempt to increase the rates from New Orleans to Atlanta, they would simply lose the traffic, because it would all go by the other two routes.

The rates from New Orleans to Atlanta would remain precisely as they are now, and, by adding the Georgia railroad commission rates from Atlanta to Fairburn, Palmetto, Newnan, Hogansville, and La Grange, respectively, the rates from New Orleans to those stations would also remain as they now are. La Grange, would not be benefited in the least, and the only result would be to deprive respondents of all participation in traffic from New Orleans destined to Atlanta, and to deprive New Orleans and Atlanta of the competition now afforded by respondents' route.

Respondents submit the following diagram (No. 2), which sufficiently illustrates the principal competing routes between New Orleans and Atlanta:

If respondents and their rivals, operating between New Orleans and Atlanta, should agree to increase the rates between those points, the traffic would simply be diverted from New Orleans to the rival supply markets referred to above. Merchants at Fairburn, Palmetto, Newnan, and Hogansville would purchase in those rival markets, ship their goods to Atlanta, and thence to destination. They would have the same



18 advantage in rates which they now have over La Grange; and the only result would be to destroy the commerce which now exists between New Orleans and Atlanta and to deprive the carriers operating between those cities of such revenue as they have heretofore derived from that traffic.

XVI. The proportions of the through rates which respondent the Atlanta and West Point Railroad Company receives out of the through rates from New Orleans to Atlanta, while low, amount to more than the cost of movement, and such revenue

as it receives from that source amounts to an average of $.... per annum.

But if said respondent was compelled to reduce all of its local rates to the proportion which it receives from through rates it would entail upon said respondents an average annual loss of $.....

Rather than submit to such a loss said respondent would be compelled to decline to participate in any through business.

Having fully answered, respondents pray to be hence dismissed.

ED. BAXTER,
.....,
.....,
Solicitors for Respondents.

State of Kentucky,
County of Jefferson.

Stuart R. Knott, being duly sworn, says that he is the first vice-president of the Louisville and Nashville Railroad Company, one of the defendants in this proceeding, and that the foregoing answer is true, as he verily believes.

S. R. KNOTT.

Subscribed and sworn to before me this 2d day of December, 1895.

G. W. B. OLMSTEAD,
[Seal] Notary Public.
(My commission expires January 5, 1898.)

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19 EXHIBIT "C."

Before the Interstate Commerce Commission.

Fuller E. Calloway
vs.
Louisville & Nashville Railroad Company; Western Railway of Alabama; Atlanta & West Point Railroad Company.

Decided December 31, 1897.

1. It being settled that competition must be considered and may justify deviation from the rule of the fourth section, it follows that wherever competition by existing lines is practicable it must be given effect; and that freely engaging in competition at one point, while wholly or largely suppressing it at a shorter distance locally, cannot entitle carriers to make higher charges for shorter than for longer hauls over the same line in the same direction.
2. The transportation of freights by defendants from New

Orleans to La Grange and Fairburn, Ga., is "under substantially similar circumstances and conditions," the conditions and circumstances affecting transportation by them from New Orleans to La Grange and Hogansville, La Grange and Newnan, and La Grange and Palmetto, all in Georgia, are also substantially similar; and freight rates over defendants' line which are higher from New Orleans for the shorter distance to La Grange than for the longer distance to either Hogansville, Newnan, Palmetto, or Fairburn, violate section 4 of the statute.

3. Higher rates charged by defendants from New Orleans to La Grange than for longer distances from New Orleans to Hogansville, Newnan, Palmetto or Fairburn, on like traffic carried under similar conditions and circumstances, and at less cost for the transportation service to La Grange. are unreasonable and unjust to complainant, and subject him and other dealers at La Grange, their traffic, and, as a locality, the City of La Grange itself, to undue and unreasonable prejudice and disadvantage, and give undue preference and advantage to the localities of Hogansville, Newnan, Palmetto and Fairburn, traffic thereto, and dealers and merchants doing business therein, in violation of sections 1 and 3 of the act.

4. Freight carried by defendants from New Orleans to either Atlanta or La Grange, Ga., is through freight and entitled to through service, and the manner in which they conduct the service cannot alter the character of such freight so as to make that carried for La Grange partly local, while the freight to Atlanta is wholly through.

5. Defendants are engaged in carry traffic over the short-line distance from New Orleans to Atlanta and intermediate points, including La Grange, Ga., 71 miles southwesterly of Atlanta. There are various competing lines between New Orleans and Atlanta, and there is possible railroad competition between New Orleans and La Grange. The relations of rates from New Orleans, New York, and other supply markets to Atlanta are, and for a long period have been, the subject of agreement or arbitration between the various lines. The rates from New Orleans to Atlanta are not unreasonably low. The rates from New Orleans to La Grange are made by combining the New Orleans-Atlanta rates with the local rates of the A. & W. P. road back from Atlanta to La Grange. Under these charges the competing Atlanta dealer can ship from New Orleans to Atlanta and then back to La Grange as cheaply as complainant can ship direct from New Orleans to La

Grange, and complainant is unable to sell at points on the line between Atlanta and La Grange. The defendant roads are all solvent, and the delivering carrier for both Atlanta and La Grange earns 12 per cent. annually for its stockholders. Held, upon all the facts, that the rates from New Orleans to La Grange are unreasonable in themselves and relatively as compared with the rates to Atlanta, and that higher rates from New Orleans to La Grange than those charged from that city on like traffic to Atlanta are and would be unlawful.

Fuller E. Calloway, for complainant.
Edward Baxter, for defendants.

Report and Opinion of the Commission.

Clements, Commissioner:

The complaint alleges, in substance, that defendants are subject to the provisions of the Act to Regulate Commerce; that rates charged by them for the transportation by continuous carriage or shipment of freights, wholly by railroad, from New Orleans, La., to La Grange, Ga., are unjust and unreasonable in themselves, and relatively unjust and unreasonable as compared with lower rates charged by defendants for carrying the same commodities over longer distances from New Orleans through La Grange to Hogansville, Newnan, Palmetto and Fairburn, Ga., and other localities; that defendants' said rates from New Orleans to La Grange and said longer-distance points and other localities unjustly discriminate against complainant and others, the city of La Grange and vicinity and traffic carried thereto, and subject merchants and dealers therein to undue and unreasonable prejudice and disadvantage, and give undue and unreasonable preference and advantage to merchants and dealers at
21 Hogansville, Newnan, Palmetto, Fairburn, and other localities and traffic consigned thereto; that defendants' said rates from New Orleans to La Grange, Hogansville, Newnan, Palmetto and Fairburn give them greater aggregate compensation for the transportation of like kind of property, under substantially similar circumstances and conditions, for the shorter distance from New Orleans to La Grange than for the longer distance over the same line, in the same direction, from New Orleans to Hogansville, Newnan, Palmetto or Fairburn; that the rates charged by defendants as aforesaid are in violation of sections 1, 2, 3, and 4 of the Act to Regulate Commerce. The rates and distances involved are set forth in the complaint, and it is further alleged therein that the lowest rate

charged by defendants from New Orleans to La Grange yields them over 1 1-3 cents per ton for each mile of haul, and that their highest rate between said points affords them nearly 6 3-4 cents revenue per ton per mile.

The defendants filed a joint answer in which they admit that the rates charged are substantially as alleged in the complaint; that their rates to La Grange amount for each mile to 1.36 cents per ton on the lowest class of freight (D), and to 6.71 cents per ton on the highest class (1), and that the rates for the shorter distance from New Orleans to La Grange are more than they charge for the longer distances in the same direction from New Orleans to Hogansville, Newnan, Palmetto, and Fairburn; but they deny that the transportation to La Grange, Hogansville, and the other points mentioned is conducted under substantially similar circumstances and conditions, and thereupon further deny that their said rates are in violation of section 4 of the statute. The defendants also deny the unreasonableness, injustice, wrongful discrimination, and undue and unreasonable prejudice and preference, advantage and disadvantage, alleged by complainant under the first, second, and third sections of the act. The answer contains statements of rates from New Orleans to the points in question, and to and from Montgomery, Ala., and Atlanta, Ga., showing also that the through rates to La Grange, Hogansville, and the other points mentioned are made by combination of rates to Atlanta with local rates back over the same line to Fairburn, Palmetto, Newnan, Hogansville, and La Grange; and it is further averred that the
22 disparities in rates complained of are caused by a competitive situation at Atlanta which compels low rates to that point from New Orleans. The competitive circumstances and conditions at Atlanta are stated in the answer to be the competition of such supply markets as New Orleans, Baltimore, and other northeastern cities, Cincinnati, Louisville, and other Ohio River cities, and the competition of carriers from such markets to Atlanta, and to have resulted, after frequent and disastrous rate wars, in the establishment of certain relative rates from these various market cities to Atlanta, a disturbance of which would immediately lead to a repetition of such wars. Similar competitive conditions are claimed by the defendants to exist at Montgomery, Ala., through which freight passes over defendants' through line to La Grange and the other points mentioned or referred to in the complaint, and they further assert that the present relation of rates to Montgomery and Atlanta must also, under existing circumstances, be maintained. The following extract from the answer seems to succinctly set out the defendants' position in this case:

"The rates from Atlanta to those stations, respectively, La Grange, Hogansville, Newnan, Palmetto and Fairburn, are fixed by the Georgia Railroad Commission, and are just and reasonable. The rates from New Orleans to Atlanta are fixed by the competition between markets, and the competition between carriers, as explained above, and are just and reasonable. The rates charged by respondents are the sum of those rates, and therefore respondents' rates themselves are just and reasonable. The reason that Fairburn, Palmetto, Newnan and Hogansville have lower rates than La Grange is due alone to the fact that they are nearer to Atlanta, and not to any favoritism or discrimination on the part of the respondents." Proposed findings of fact submitted by counsel for the carriers have been fully considered by the commission.

The alleged violations of section 4, the long and short haul clause, are matters which seem to demand separate consideration in this case.

It is admitted by defendants that greater aggregate rates are charged by them for the carriage of freight from New Orleans to La Grange than they charge and collect on the same kind of traffic for the longer distances over the same line in
23 the same direction, from New Orleans to Hogansville, Newnan, Palmetto or Fairburn. They do not claim that their cost of transportation is less in carrying goods to these longer-distance points than it is when the like freight is transported to La Grange; they insist upon that defense only in respect of freight destined to Atlanta. We further find in the record that through rates to these points are made by combination of the joint rate to Atlanta and the local rate of the Atlanta & West Point Railroad Company back over the same line to destination; that these rates are fixed on classes 1 to 6 and A to H, and range from class 1, the highest, to class D, the lowest as follows:

To	From New Orleans Rates Per Hundred Pounds.									
La Grange,	Distance	425	miles,	Class	1,	$1.43;	Class	D,	29	cents
Hogansville,	"	438	"	"	"	1.39;	"	"	28¼	"
Newnan,	"	457	"	"	"	1.33;	"	"	27½	"
Palmetto,	"	471	"	"	"	1.27;	"	"	26½	"
Fairburn,	"	478	"	"	"	1.25;	"	"	26	"

While these rates so made by combination are the same as defendants' rates for the greater distance and service to and back from Atlanta, the traffic for these points from New Orleans is not in fact carried to Atlanta and back again over the line to the point of destination, and no necessity for so doing is shown or

suggested in this case. The freight is delivered at La Grange, Hogansville and the other points in the order of their situation from New Orleans; and freight from New Orleans to Hogansville, Newnan, Palmetto and Fairburn, carried over longer distances than such freight destined to La Grange, is transported at greater expense to the defendant carriers. The shipments are billed through and are continuous to each of these places, and the carriage is also substantially continuous, any handling or transfer of the freight at junction points being merely incidental to the through service according as defendants see fit to conduct it. The defendants have as great interest in carrying freight to La Grange as to Hogansville or Fairburn, greater in fact, if the rates are the same, for their expense of carriage is necessarily less. The local rates in either direction between points on the Atlanta & West Point Railroad are substantially in accordance with the maximum distance rates allowed by the Geor-
24 gia Railroad Commission, and local shipments from La Grange are as advantageous to that carrier as local shipments from Hogansville, Newnan, Palmetto or Fairburn. Rates as low from New Orleans to La Grange as defendants charge from New Orleans to any of these longer-distance points would benefit dealers at La Grange, and the interests of consumers in the section affected would be promoted rather than injured by the competitive advantages which would result to complainant and other merchants at La Grange. It also appears from uncontradicted testimony that complainant is engaged as a general merchant, both at wholesale and retail, at the city of La Grange, but that the rates enforced by defendants prevent him from supplying goods by wholesale northerly of La Grange, on or near defendants' line, without being subjected to the disadvantage resulting from much lower rates to the less favorably situated longer-distance stations of Hogansville, Newnan, Palmetto and Fairburn; and that a great portion of his wholesale trade is now confined, largely by reason of defendants' rates, to localities off the line of railway, which are reached by wagon from La Grange.

It remains to be determined under this branch of the case whether competition at Atlanta causes transportation of freight by the defendants from New Orleans to Hogansville, Newnan, Palmetto or Fairburn to be conducted under circumstances and conditions which are substantially dissimilar from those which affect the transportation of like traffic from New Orleans to La Grange. This includes both the competition of markets for supplying goods to Atlanta and the competition of carriers for the carriage of freights to that point from New Orleans and from western, northern and northeastern cities. The defendants say

that the Atlanta business is not unprofitable under the rates in force, and they claim that all the rates from Atlanta to Fairburn are reasonable, including the rate on first-class freight, which amounts to 22 cents for 18 miles (equal to more than 24 cents a ton a mile). A profitable rate from New Orleans to Atlanta added to defendants' apparently ample local rate from Atlanta to Fairburn, and the aggregate applied as the rate on business direct between New Orleans and Fairburn, cannot be found to have been improperly forced down to a low standard at Fairburn by the existence of competitive conditions at Atlanta, whatever such conditions may be.

Another fact requiring consideration is that LaGrange is itself a competitive point whenever the railroad carriers of that city see fit to actively engage in competition. The Macon & Birmingham Railroad connects LaGrange with Macon over a distance of 105 miles, and that road, in connection with the Southern Railway, can carry traffic over about the same distance between Atlanta and LaGrange. The distance by the Atlanta & West Point Railroad from Atlanta to LaGrange in only 71 miles. On traffic from the eastern cities, Macon takes a slightly lower rate than Atlanta. The carriers to LaGrange can at will show and claim the existence of strong market and carriers' competition at LaGrange, as forcing rates thereto down to the Atlanta basis, or they can, as they do, subject that city to through rates which are merely combination of rates based on Atlanta or Macon. With a slight differential in favor of rail and water routes, all lines to Atlanta from the same points of shipment charge substantially the same rates, and the same is true as to Macon; and all lines to LaGrange from the same point of shipment also charge substantially the same rates to that point. Some ten or twelve lines are stated in testimony to compete for business between New Orleans and Atlanta; but in point of fact only three roads take Atlanta traffic out of New Orleans, the Louisville & Nashville, Illinois Central, and New Orleans & Northeastern, and only four roads deliver such traffic in Atlanta, the Atlanta & West Point, the Southern, the Central of Georgia and Western & Atlantic, defendants' route being the shortest, 496 miles. The next shortest route to Atlanta in which none of the defendants participates is via the New Orleans and Northeastern and Southern Railways, 526 miles, and the next, the Ilinois Central & Southern, 647 miles. The longest line is via the Illinois Central, Nashville, Chattanooga & St. Louis and Western & Atlantic, 882 miles. The Central of Georgia can receive traffic for Atlanta at Montgomery from the Louisville & Nashville, one of these defendants, and by that route Atlanta is 644 miles from New Orleans. The three ini-

tial lines out of New Orleans manifestly are able to largely control the routing of traffic to Atlanta. With the two lines at LaGrange, one to Atlanta and the other to Macon and Atlanta, it is quite practicable to form a number of com-
26 peting routes from New Orleans.

If competition is to be deemed a factor on account of which carriers may deviate from the rule of the fourth section, then wherever such competition is possible it must be permitted to have full sway; it should not be practiced to an extreme here and wholly or largely suppressed there. Competition is possible at LaGrange whenever the carriers to that point see fit to engage in it, and the Atlanta competitive conditions do not make defendant's rates unduly low at Fairburn (the most favored longer-distance point complained about under the fourth section in this case); on the contrary, such rates appear to be unnecessarily high for the through service from New Orleans to that point.

Having fully considered all the evidence and material facts and given due weight to the competition of carriers and of markets for Atlanta trade, together with the fair interests of the defendant carriers, the interests of the communities involved, and those of the complainant and other dealers concerned (The Import Rate Case [Texas & P. R. Co., v. Interstate Commerce Commission], 162, U. S. 197, 40 L. ed. 940, 5 Inters. Com. Rep, 405; The Troy, Ala., Case [Interstate Commerce Commission v. Alabama M. R. Co.], 168 U. S. 144, 42 L. ed.—), we find and hold that transportation of freights by defendants from New Orleans to LaGrange and the transportation of like freight from New Orleans to Fairburn are under substantially similar circumstances and conditions; and that the same is true as to such transportation by defendants to LaGrange and Hogansville, LaGrange and Newnan, and LaGrange and Pelmetto. So much of the complaint as charges violation of the fourth section must be and is sustained.

Such higher rates to LaGrange than to Hogansville, Newnan, Palmetto and Fairburn, longer distances, on traffic carried under like conditions and circumstances, and at less cost for the transportation to LaGrange, are also unreasonable and unjust to complainant and subject him and other dealers at LaGrange, their traffic, and, as a locality, the City of LaGrange itself, to undue and unreasonable prejudice and disadvantage, and give unlawful preference and advantage to the localites of Hogansville, Newnan, Palmetto and Fairburn, traffic thereto, and dealers and merchants doing business therein, in violation of sections 1 and 3 of the act.

27 We have then remaining the questions whether the rates to LaGrange are reasonable and just in them-

selves, and whether they are relatively so as compared with the rates charged by defendants to "other localities," which phrase "other localities" occurs in the complaint in that connection, was duly made the subject of answer by the defendants, and in their proofs, transportation and rates to Atlanta were specially compared with transportation and rates to LaGrange; and whether the rates complained of are, as compared with those from New Orleans to Atlanta, in contravention of the third section or undue preference and prejudice clause of the law.

The findings of the Commission concerning these questions, in addition to the pertinent findings hereinbefore stated, are as follows:

1. The Atlanta & West Point R. R. Co., and the Western Railway of Alabama are different corporations, but their properties are operated together under a common management. The Atlanta & West Point extends from Atlanta to West Point, and the Western of Alabama from West Point through Montgomery to Selma, Ala. At Montgomery, the Western of Alabama connects with the Louisville & Nashville, which extends from there to New Orleans. LaGrange is 71 miles southwesterly of Atlanta on the Atlanta & West Point road, and West Point, the junction of that road and the Western of Alabama, is 87 miles from Atlanta. Opelika, on the Western of Alabama, is 109 miles from Atlanta and 38 miles from LaGrange. Montgomery is 175 miles southwest of Atlanta and 320 miles from New Orleans. LaGrange rates are, with a single exception (class H based on Montgomery), combinations of rates to and from Atlanta, and West Point rates appear to be largely based upon combinations of rates to and from Opelika. Montgomery, Opelika and Atlanta have joint through rates from practically all points; and those from New Orleans, New York, Boston, Philadelphia, Baltimore, Cincinnati, Louisville are, in every instance, less than can be made by the combination method. Traffic from New Orleans to Atlanta or LaGrange is carried by defendants on through bills of lading issued to shippers. The entire charge is collected by one of the carriers, usually at the destination point, and is subsequently divided among the three carriers according to some agreed basis of division. Such traffic is shipped through and is taken by defendants and carried through, without other stoppage or interruption than such as may be incidental to the through or continuous service, as defendants conduct it.

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2. LaGrange is a city of 4,000 or 5,000 inhabitants with thirty or forty business establishments. Complainant is the only merchant who has seriously attempted to engage in the wholesale trade at that point, and he has declared his intention

to start a strictly wholesale business there, if the carriers shall reduce rates to LaGrange so that he can compete for such business with dealers at Atlanta and other places in that section. Atlanta had a population of 64,000 in 1890, and is estimated to have since increased to 100,000. It is served by competing through lines of transportation from all sections, and the various primary markets of the country are in competition for Atlanta trade. Such competition has been active for many years, and during that period the carriers have indulged in a number of rate wars whereby rates affected from points of shipment to Atlanta and other principal points in the South were, for the time being, made abnormally low. But the same general competitive situation with reference to rate changes from points of supply has also existed at LaGrange, and changes in rate conditions at Atlanta have ordinarily worked similar changes in rates to LaGrange. Thus, a first-class rate of $1.43 on traffic from New Orleans to LaGrange, made by adding the $1.03 rate to Atlanta and the 40-cent local from Atlanta to LaGrange, would be reduced to 80 cents, if, during a rate war, the first-class rate from New Orleans to Atlanta should be as low as 40 cents.

3. The normal, long-established relation of rates to Atlanta from New Orleans, New York, Boston, Philadelphia, Baltimore, Cincinnati, Louisville and St. Louis is indicated by the following statement of rates on first-class traffic:

	Per 100 lbs.	
New Orleans	$1.03	All Rail.
New York, Philadelphia and Boston	1.26	All Rail.
New York, Philadelphia and Boston	1.14	Sea and Rail.
Baltimore	1.19	All Rail.
Baltimore	1.07	Sea and Rail.
Cincinnati	1.07	All Rail.
Louisville	1.07	All Rail.

The rates from Philadelphia and Boston are the same as from New York. The rate to LaGrange is the local from Atlanta, added to the rate to Atlanta, in each case. The relative rates to Atlanta have been the subject of arbitration and agreement between interested lines at different times during the past 12 or more years, and the above indicated basis has been substantially returned to by the carriers upon cessation of the rate wars which have prevailed during that period. The all rail rates from the east—New York, Philadelphia, Boston and Baltimore—to Atlanta are made with reference to rates in force via the sea and rail lines from those points to Atlanta. These rates from eastern

cities by all rail and by the part rail and part water routes are fixed by agreement of the several lines and are published and filed in I. C. C. No. 400, "The Southern States Freight Association," Eastern Cities Freight Tariff No. 6, A. S. W. effective March 10, 1897, which bears the following descriptive title: "Rates of Freight from Eastern and Virginia Cities and Points in Virginia and North Carolina Named in Note 6, Page 3, to Southern Common Points in Association Territory." Such steamship lines as the Clyde, Merchants' & Miners' Transportation Co. New York & Texas and Ocean Steamship Co., and the Baltimore, Chesapeake & Richmond Steamboat Co. are named with the railway lines as parties to this tariff, and the tariff purports to be issued by the "Rate Committee of the Southern States Freight Association" and the commissioner and secretary of that association. Rates from Cincinnati and Louisville to Atlanta are the same on the numbered classes as rail and water rates from Baltimore, but considerably lower on lettered classes, and class rates from New Orleans to Atlanta are four cents less than from Cincinnati and Louisville. The general relation of rates to Montgomery, Ala., also established by general agreement among the lines interested, is indicated by first-class rates as follows:

New Orleans 89c. per 100 lbs. (at time of hearing 94c.) all rail.
New York and Boston 126c. per 100 lbs., all rail; 114c. per 100 lbs. sea and rail.
Philadelphia 120c. per 100 lbs., all rail; 108c. per 100 lbs., sea and rail.
Baltimore 118c. per 100 lbs., all rail; 106c. per 100 lbs., sea and rail.
Cincinnati 108c. per 100 lbs., all rail.
Louisville 98c. per 100 lbs., all rail.

30 Opelika, Ala., takes substantially the Atlanta rates from New Orleans, New York, Philadelphia, Boston, Baltimore and Louisville, and $1.17, first-class (10 cents higher than to Atlanta), from Cincinnati.

Following are about the short line distances from New York, Baltimore, Cincinnati, Louisville, and New Orleans to Atlanta:

New York to Atlanta, all rail, 876 miles.
New York to Atlanta, sea and rail via Savannah 978 miles.
New York to Atlanta, sea and rail via Charleston 937 miles.
New York to Atlanta, sea and rail via Norfolk 880 miles.
Baltimore to Atlanta, all rail, 691 miles.
Cincinnati to Atlanta, all rail, 476 miles.

Louisville to Atlanta, all rail, 456 miles.
New Orleans to Atlanta, all rail, 495 miles.

Defendants and carriers generally have in effect various special or commodity rates which are in the nature of exceptions to their class rates. Such rates are made with particular reference to the movement of commodities between points named in the commodity tariffs. Thus, sugar, which, in barrels or hogsheads, is classified as 6th class by defendants and under which the rate from New Orleans to Atlanta would be 42 cents, is given a commodity rating of 18 cents in carloads and 21 cents in less than carloads between those points. These sugar rates are 10 cents per hundred less than those applying by sea and rail lines from northeastern cities and 7 cents lower than the sugar rates from Baltimore to Atlanta. On molasses, a commodity rate of 33 cents is in force from New York to Atlanta, sea and rail, while defendants have in effect from New Orleans to Atlanta a commodity rate of 25 cents per hundred. Over half the tonnage carried by the defendant though line from New Orleans to Atlanta for the year ended June 30, 1895, consisted of sugar and molasses, and these articles made up 30 out of a total of 100 tons carried by this line from New Orleans to LaGrange during the same period; but while the rates for carloads are, respectively, 18 and 25 cents to Atlanta, they are 35 and 37 cents to LaGrange, 71 miles less distance. Defendants' rates over the short line distance from New Orleans to Atlanta are not shown to be unduly low by comparison thereof with the rates and distances over other lines from New Orleans or with the rates and distances over the various lines from said other markets to Atlanta.

31 4. Following is a table of distances and present class rates from New Orleans to Montgomery, Opelika, West Point, LaGrange and Atlanta by defendants' line:

To	Distance Miles	From New Orleans. 1	2	3	4	5	6	A	B	C	D	E	H	F
Montgomery	320	89	79	68	55	47	36	24	27	20	16	44	29	32
Opelika	387	103	88	77	64	52	42	24	33	26	22	46	51	44
West Point	409	131	114	101	84	69	55	37	47	35	30	64	61	61.5
LaGrange	425	143	124	109	93	74	59	41	48	33.5	29	66	74	59
Atlanta	495	103	88	77	64	52	42	24	31	24	20	44	49	40

It is set forth in defendants' joint answer that complainant has the option or choice of rates via Atlanta or Montgomery, and that if LaGrange rates were not based on Atlanta, then a reasonable and just rate would be the combination of rates to and from Montgomery; and it is shown that the Montgomery combination would be, first class, 94 cents to Montgomery added to 75 cents, Montgomery to LaGrange, a total of $1.69. Under the present 89-cent rate to Montgomery from New Orleans, such combination rate would be $1.64. The 75-cent rate so mentioned as in force from Montgomery to LaGrange is itself a combination of rates from Montgomery to West Point and West Point to LaGrange, namely, 55 cents, approved by the Alabama R. R. Commission for such local service over the 88 miles distance between Montgomery and West Point, and 20 cents approved by the Georgia Commission for local transportation over a distance of 16 miles from West Point to LaGrange. West Point is on the boundary line between Alabama and Georgia.

The through charge so claimed to be reasonable by defendants, in case a lower combination via Atlanta were not possible, is the sum of what would be charged for three distinct services performed by the defendant roads, respectively, on entirely separate shipments, that is to say, 89 cents for a local shipment over the Louisville & Nashville, New Orleans to Montgomery and delivery there to consignee; 55 cents for a second shipment and carriage via the Western of Alabama from Montgomery to West Point and delivery there to consignee; and 20 cents for a third shipment and transportation by the Atlanta & West Point from West Point to LaGrange and delivery there to consignee; all of which would amount to no more in the aggregate than the through charge for a single shipment and joint service from New Orleans to LaGrange contended for as just and reasonable in case the Atlanta combination were higher.

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Among tariffs on file with the commission, remaining uncanceled and apparently in present effect, is a rate sheet of the Western of Alabama and Atlanta & West Point Railroad, effective October 20, 1889, showing class rates between Opelika, Ala., and local points on the Atlanta & West Point, including LaGrange, which names a rate of 43 cents Opelika to LaGrange, first-class, and lower on other classes, and under which some freight at the rate from New Orleans to Opelika and the rate from Opelika to LaGrange would go on such combination at a slightly less total rate than the combination via Atlanta. Under these rates and those to and from Atlanta, dealers at Atlanta and Opelika are upon nearly even terms in competing for wholesale trade in LaGrange, and complainant at LaGrange, 38 miles from Opelika and 71 miles from Atlanta, must pay as much for through service to LaGrange as his competitors on either side pay for two distinct shipments, transportations and deliveries. The Atlanta dealer can, by reason of defendants' rates, sell New Orleans goods cheaper at Hogansville, 59 miles distant, than complainants can, though LaGrange is only 13 miles from Hogansville, and the same is also true as to trade with Newnan, which is somewhat nearer to LaGrange than to Atlanta. Complainant, as compared with his Atlanta competitor, is at a disadvantage in all the section to the north of LaGrange, and in LaGrange the Atlanta dealer can sell as cheaply as complainant can.

5. The first-class rate of $1.03 to Atlanta affords the defendants a rate per ton of over 4.17 cents for every mile in a haul of 495 miles; and the lowest or class D rate of 20 cents, applied principally on carloads of grain, cotton seed, hay, meal and some other mill stuff, gives them 8 of a cent per ton for each

mile; and the next lowest class (C), rate 24 cents, yields them 9.7 mills a ton per mile. The rates are divided between the two managements (Atlanta & West Point and Western of Alabama are under a common management) on what appears to be a mileage basis, so that such figures are substantially the rev-
32 enue per ton per mile for each.

The average revenue received on all traffic by all roads in the United States for the year ending June 30, 1895, was 8.39 mills per ton per mile; for all roads in Group V (Statistics of Railways), which includes these roads, the average rate per ton per mile in that year was 8.95 mills; such averages on all traffic for the three defendant roads were 1.726 cents for the Atlanta & West Point, 1.586 cents for the Western of Alabama, and 8.28 mills for the Louisville & Nashville line south of the Ohio River. Under present rates New Orleans to La-Grange, the rates per ton per mile for the 425 miles are from 6.71 cents on first-class to 1.36 cents per ton on class D.

The percentage of operating expenses to earnings from operation on all roads in the United States for the year to June 30, 1895, was 67.48 per cent; in Group V (including defendant roads) it was for that year 68.30 per cent; for the Atlanta & West Point it was 58.43 per cent; for the Western of Alabama it was 66.13 per cent; and for the Louisville & Nashville (line south of the Ohio River) 63.50 per cent. The rates per ton per mile afforded by the New Orleans traffic to Atlanta at present rates compare favorably with the average rates per ton per mile received by all the roads in the United States and in the section of country through which these roads penetrate; and their percentage of operating expense to earnings is considerably less than such percentage reported for all United States roads or for all roads in their section of the country.

Each of the defendant roads is solvent. For the year ending June 30, 1895, the Louisville & Nashville, a large system, of which only a small part is involved in this case paid interest on its large funded debt (over $79,000,000) and discharged its other accruing liabilities. The Western of Alabama for that year paid interest on $1,543,000 bonded debt and 2 per cent dividend on $3,000,000 capital stock, and had a considerable surplus on hand. The Atlanta & West Point paid in that year 6 per cent dividend on $1,232.200 capital stock and 6 per cent interest on the same amount of "certificates of indebtedness," and had a considerable sum remaining. This road has no bonded debt, and the above stated stock and certificates constitute its capitalization. Such capitalization, made up of equal amounts of stock and certificates, amounts to $28,-
34 756.12 per mile based on a total of 85.7 miles. The certificates of indebtedness are not secured by mort-

gage. The testimony of the president of the road is that it would cost at the present time to duplicate the Atlanta & West Point Railroad and the Western Railway of Alabama, including their terminals, from $30,000 to $35,000 per mile and that this includes the enhanced value of property owned by the company due to the growth of cities and towns along the line. The same witness also testified in answer to an inquiry propounded by complainant as to the certificates amounting to a doubling of the stock without cost to the stockholders, that the company had never kept an improvement account; that no capital stock has been issued during the many years in which the road has been improved, the old rails being removed and heavier rails substituted, the old equipment replaced with heavier cars and locomotives, and iron bridges constructed in place of wooden structures; that when the "debentures" (certificates of indebtedness) were issued the value of the property was much in excess of its original cost; that there was nothing surprising to his mind that the stockholders should have reimbursed themselves for the added value of the road, and that such appears to have been the manner of procedure; that all the present capitalization of the road is not excessive as compared with other lines, it being only, in round figures, about $28,000 per mile as compared with $63,000 per mile for all the roads in the United States. Upon this statement, complainant suggested "that those improvements and those new rails, etc., have come out of the profits, which shows you are getting enough profit out of the rates to do that and pay 6 or 8 per cent interest." The witness answered: "The road has never exceeded the legal rates, and the added value is due to the economy, etc., in conducting the property, and it might properly be returned to the stockholders as representing that added value." By the report of the Atlanta & West Point Railroad Company for the year ending June 30, 1890, filed with this commission as the law requires, and sworn to by its general manager and by its treasurer, it appears that these certificates of indebtedness to the full amount of $1,232,200 were issued in 1881, and the treasurer, replying to an official inquiry from the office of the commission in reference to omissions and discrepancies in that report,
35 said as to the certificates of indebtedness: "No security for this debt other than that the first earnings of the road are set aside for the payment of interest on same. As to the inquiry why the debt is called certificate of indebtedness, I regret that I am not able to give the information. It was a dividend of 100 per cent on the capital stock of the road which was paid in this shape in 1881."

The actual paid in or working capital of the Atlanta & West

Point road is therefore not in excess of $1,232,200, or $14,378.06 per mile, and on this the stockholders have been receiving a return of 12 per cent annually after paying all expenses of operation, repairs and improvements. They received such return in 1890, and for every year covered by annual reports to the commission, including the year ended June 30, 1897. The Atlanta & West Point Railroad Company, as before found, is the delivering carrier for both LaGrange and Atlanta, and it is its local rates back from Atlanta to LaGrange which are added to the joint through rate over the three defendant roads from New Orleans to Atlanta to make through rates on freight carried only from New Orleans to LaGrange.

6. For the year ended March 31, 1896, the tonnage to Atlanta, by all routes, from eastern and northeastern points, including the Atlantic Seaboard, was 170,365.26 tons, and by all routes from Ohio and Mississippi points, and via Lexington, Ky., and from Nashville , Tenn., Johnsonville, Tenn., Florence, Sheffield and Riverton, Ala., it was 137,460.90 tons; and by all routes from New Orleans to Atlanta it was 11,113.20 tons. Total, 318,939.36 tons. This is stated to comprise practically all the tonnage destined to Atlanta in that year. The tonnage carried from New Orleans to Atlanta was only about 3 1-2 per cent of such total tonnage.

Tonnage carried from and via New Orleans to Atlanta; Year ended March 31, 1896.

Miscellaneous Merchandise	9,445	tons.
Oats	1,002.85	tons.
Other grain	25.65	tons.
Grain Products	20	tons.
Implements, Machinery, Furniture	17.45	tons.
Stoves, Special Iron Articles, etc.	1.35	tons.
Packing House Products	.10	tons.
Bridge and Railroad Iron, Stone, Brick, Cement, Salt, Fertilizers	600.80	tons.
Total	11,113.20	tons.

Of this tonnage, the Louisville & Nashville R. R. Co., one of the defendants, carried 7,636.05 tons, or 68.71 per
36 cent of the total, and over 70 per cent of the miscellaneous merchandise, which constituted the great portion of the tonnage. The remaining tonnage was about equally divided between the Illinois Central and New Orleans & Northeastern routes, the first carrying 1,523 tons, the other, 1,954.15 tons. A very large portion, if not all, of the Atlanta business

via the Louisville & Nashville from New Orleans undoubtedly came by the defendant through line. A "statement of tonnage by classes and commodities from New Orleans, La., to Atlanta, Ga., and local stations on the A. & W. P. R. R. and the W. Ry. of Ala. for year ending June 30, 1895," was put in evidence for the defense. This statement shows a total of 6,773 tons to Atlanta; 100 tons to LaGrange; 46 tons to Hogansville; 52 tons to Grantville; 33 tons to Moreland; 188 tons to Newnan; 21 tons to Palmetto; 8 tons to Fairburn; and 2 tons to East Point. It was also testified by a witness for defendants that the revenue derived by the lines of the defendant companies on traffic from New Orleans to Atlanta and LaGrange amounted, for the year ending June 30, 1895, to $13,470.19 at Atlanta and $262.70 at LaGrange. At the tariff rates then in effect over this line from New Orleans to LaGrange and Atlanta the revenue to both points on this business should have been much greater, or else the tonnage so stated was much less than was actually carried by those companies. As appears by the tonnage statement, 3,668 tons of sugar were carried from New Orleans to Atlanta in that year, and at the prevailing carload rate of 18 cents a hundred, or $3.60 per ton, the aggregate revenue on this commodity alone would be $13,204.80. Add to this 995 tons of molasses at $5.00 a ton, amounting to $4,975, and the revenue statement exceeded by $4,709.61, with 2,110 tons out of 6,773, the total Atlanta tonnage, to be accounted for. This 6,773 tons could not have been the total tonnage by all lines New Orleans to Atlanta, for the year ending nine months later shows a total tonnage by all such lines of 11,113 tons, and, besides, the statement was made up by the auditor of the Atlanta & West Point and Western Railway of Alabama from waybills in his office. The same statement showing the movement of 100 tons New Orleans to LaGrange in the year to June 30, 1895, sets forth that included in such movement were 17 tons of molasses, 13 tons of sugar,
37 and 6 tons of 6th class freight, which at lowest prevailing combinations on Atlanta appear to call for a total revenue of $287.60; and this alone exceeds the stated total revenue on New Orleans freight of $262.70, with 60 tons remaining to be accounted for. This testimony seems plainly contradictory.

The statement of tonnage by this line from New Orleans to Atlanta is not, however, greatly disproportionate to the figures of total tonnage by all lines between those points given in evidence by another witness for a year ending nine months later, and 6,773 tons carried between New Orleans and Atlanta for the year ending June 30, 1895, is taken as approximately correct.

This was more than sixty times the tonnage carried over the same line for the same period between New Orleans and LaGrange, and more than six times the amount of the tonnage from New Orleans freight to local points on the Western of Alabama and Atlanta & West Point for the same year. Yet the total tonnage from New Orleans to Atlanta and local intermediate points on the Atlanta & West Point was but an insignificant portion of the total tonnage transported by the Atlanta & West Point during the same time (year ending June 30, 1895). Such total freight tonnage was 214,905 tons, of which 153,246 tons (including this New Orleans traffic) was received "from connecting roads and other carriers."

As before found, the Louisville & Nashville, as an initial road out of New Orleans, carried for the year ending March 31, 1896, over 68 per cent of the tonnage from New Orleans to Atlanta, namely, 7,636 tons, and this was presumably nearly all routed over the three defendant roads. Such total tonnage for a year, composed of less than carload as well as carload shipments, amounted at the rate of twelve tons to a car to only about 565 full carloads, a little over 1 1-2 carloads per day. The engines hauling trains running from Montgomery to Atlanta haul an average of nearly 21 loaded cars, and their capacity is sufficient to haul 10 more. But it is testified that traffic from New Orleans to Atlanta usually moves in carloads, either as a full carload shipment or because there is daily a sufficient number of less than carload shipments from New Orleans to Atlanta to make up a carload, and that the Atlanta cars go through from New Orleans to Atlanta without break of bulk or transfer at Montgomery or other rehandling; that
38 New Orleans freight destined to LaGrange is generally in less than carloads, and is transferred at Montgomery, being checked out from the car to the platform, and then put into a car to be hauled by the local freight train from Montgomery to LaGrange, and that altogether it may be handled from five to a dozen times; that transporting New Orleans traffic to LaGrange is done at three times the expense incurred by the carrier in moving New Orleans freight to Atlanta. That LaGrange business compared with Atlanta business from New Orleans costs the carrier more to receive, transport and deliver, is asserted in testimony by defendants' witnesses, but such assertion is not supported by evidence concerning the essential details of management and necessary cost of service to the two points; and opposed to such assertion are a number of conditions and circumstances, including the fact that the distance to LaGrange is only about five-sixths of the

distance to Atlanta, and that it ordinarily costs more to transport freight for each additional mile it is hauled.

The local train service on the Atlanta & West Point-Western of Alabama system is not maintained exclusively for freight from New Orleans to LaGrange. Cars, engines, and crews engaged in hauling New Orleans freight from Montgomery to LaGrange are also engaged in hauling such and other freight to other stations, in hauling freight between local stations, and in hauling freight shipped locally from Montgomery. Such local service is also employed in transporting freight from Atlanta to points on this system, and in doing generally the local business of the line. Neither do the tonnage figures shown for New Orleans-Atlanta business indicate that such traffic can furnish the delivering system, running from Montgomery to Atlanta, with a train load daily or on other than very exceptional occasions.

The defendants, instead of hauling LaGrange freight through in the trains used for Atlanta traffic from Montgomery, prefer to carry such freight by local service from Montgomery, at which point new trains are made up for all traffic destined to points on the Atlanta & West Point-Western of Alabama system, and the rehandling of LaGrange freight at Montgomery is incidental to the transportation methods of that system. By forwarding New Orleans to LaGrange freight from Montgomery by the established local train service from Mont-
39 gomery, that system avoids the expense of stopping the train and carrying traffic destined to Atlanta and points beyond that city, and adds but little to the cost of the regular local service from Montgomery to LaGrange and at other smaller stations on the delivering road. If the traffic from New Orleans to LaGrange were greater in volume it might be more profitable for these defendants to forward such freight via the through Atlanta trains, thus using the engines on such trains more nearly to their maximum capacity, or else such greater volume of freight to LaGrange would increase their local train freight and thereby decrease the percentage of expense to earnings on the local service. Carload shipments at New Orleans to either Atlanta or LaGrange involve substantially as low necessary cost for billing, switching, hauling and delivery to LaGrange as to Atlanta, and when LaGrange carloads are hauled in trains from Montgomery different from those used for Atlanta freight, it is so done because the carriers prefer to conduct such transportation in connection with their established and otherwise required local service. Less than carload shipments at New Orleans for Atlanta or LaGrange are alike separately billed to the shipper, waybilled by the carrier

from New Orleans, and expense-billed to the consignee, and involve like expense to the carriers for handling, except as the Atlanta & West Point Western of Alabama system prefers to rebill LaGrange freight at Montgomery and transfer and forward the same by the different local train service. The service as rendered by the initial road, the Louisville and Nashville, from New Orleans to Montgomery seems to be practically the same whether the freight is destined to Atlanta or LaGrange. The through freight from New Orleans and other points for Atlanta and points beyond and the local freight from Montgomery both pass through LaGrange; these respective through and local services are attended with items of expense common to both, such as maintenance of way and structures, and general expenses; and many, if not all, items of cost which are peculiar to each necessarily apply to traffic in both directions—to all through and to local traffic. The purely local train service from Montgomery may or may not be more expensive than the through service, but if it is, the transportation of freight from New Orleans to LaGrange is actually part of the through traffic, and carrying it from Montgomery to LaGrange by local trains must tend to increase instead of diminish the net earnings of the delivering system from its local service. Under present rates in force to LaGrange as compared with rates to Atlanta, the volume of traffic from New Orleans or other points to LaGrange which defendants may carry cannot, in the nature of things, greatly increase, and the natural expansion of complainant's trade, particularly the wholesale part of it, is hampered, if not altogether prevented, by such related charges.

8. It is claimed for the defense that giving Atlanta and other so-called competitive point rates to LaGrange would result in yearly loss of $5,723.28 in LaGrange station earnings, and that raising rates to and from such competitive points so that they should not be less than those in force to and from places through which the traffic passes would result in loss to those carriers of $133,596.24. These figures are based upon estimates of traffic at LaGrange for a year and a complete loss of traffic at competitive points. Like assertion is made that if rates at all local stations on the line were adjusted so as not to exceed rates to and from competitive points the result would be a loss of $63,331.56. The items on which these calculations were based are not in evidence, the losses so stated are necessarily estimated and assumed, and, besides, they embrace traffic and circumstances which do not relate to traffic and transportation from New Orleans to LaGrange and Atlanta and which are not within the scope of this proceeding. If the figures in testimony relat-

ing to revenue from New Orleans traffic to Atlanta and LaGrange are correct, defendants would, by increasing rates to Atlanta to the present LaGrange rates from New Orleans, without the concurrent action of competing lines to Atlanta, lose $13,470.19, more or less, in a given year, for shippers would doubtless choose the cheaper routes. On the other hand, if defendants should reduce New Orleans-LaGrange rates to the New Orleans-Atlanta rates, they would by such action only lose the difference between the present Atlanta and LaGrange rates, and the total earnings on freight from New Orleans to LaGrange are stated in testimony to have been only $262.70. These figures are based on testified earnings during the year to June 30, 1895. Fifty per cent. of such total earnings, equal to $131.25, is an excessive estimate of what defendants would lose if LaGrange should be given Atlanta rates from New Orleans and
41 the tonnage rates were not increased thereby. This might be increased somewhat through any necessary readjustment of present rates at a few points south of LaGrange. The rates which defendants now charge from New Orleans to Atlanta constitute, as a whole, sufficiently liberal compensation for the service, and to say that reducing their rates from New Orleans to LaGrange to the Atlanta basis will result in any loss to them whatever can only be founded on assumption; but if any immediate resulting loss of net revenue can be demonstrated, any statement that such loss would be continuing is necessarily based upon opinion, and not on fact. On the contrary, the lower rates from New Orleans to Atlanta with present adjusted charges from other sources have played an important part in the development of that city, including railway traffic thereto and therefrom; and that like rates from New Orleans to LaGrange would prove a potent factor in increasing the now insignificant tonnage from New Orleans to LaGrange, or, indirectly, from other sources, is largely indicated, if not fully shown, by the effect of lower relative rates at Atlanta and other rate-favored points in Georgia and Alabama.

9. Under defendants' higher rates from New Orleans to LaGrange than to Atlanta, the City of LaGrange, complainant, and other dealers at that point, are deprived of the natural advantages resulting from their nearer location to New Orleans on defendants' line, and they and all descriptions of traffic from New Orleans to LaGrange are subjected to undue prejudice and unreasonable disadvantage in favor of Atlanta, merchants and dealers therein, and New Orleans traffic thereto. Defendants' rates from New Orleans to LaGrange as hereinabove set forth are unjust and unreasonable in themselves and as compared with their rates on like traffic from New Orleans to At-

lanta. That part of defendants' rates from New Orleans to LaGrange which consists of the local charge of the Atlanta & West Point back from Atlanta to LaGrange is unreasonable and unjust and unduly prejudicial to complainant and others doing business at LaGrange. Freight rates charged by defendants from New Orleans to LaGrange, in so far as they have been or are higher than rates charged by them on like traffic from New Orleans to Atlanta, were, when the complaint was filed, have been since, and are now unreasonable, unjust, wrongfully discriminating, and unduly prejudicial to complainant
42 and other dealers at LaGrange, and any such higher rates to LaGrange would be so unreasonable, unjust, discriminating and prejudicial.

Conclusions.

We are not able to find justification for the rates in question in the record of this case. Market competition, the strife between New York, Baltimore, Cincinnati, New Orleans and other cities for the sale of goods exists in respect to LaGrange as well as to Atlanta. Those supply markets send more goods to Atlanta, but they can have little, if any, preference whether the commodities they sell go to Atlanta or LaGrange. With even transportation charges to both places, dealers therein would have equal advantage in the various purchasing markets. The defendants and other carriers from the respective market cities are in direct control of the rates to Atlanta and LaGrange, and they have adjusted rates from all sources of supply to both points which are higher to LaGrange by the amount of the local rate from Atlanta, though LaGrange is nearer than Atlanta to New Orleans. Defendants' rates from New Orleans to Atlanta are neither unprofitable nor unduly low. In fact, defendants, themselves, say in their joint answer that their rates from New Orleans to Atlanta are "just and reasonable." Moreover, the relation of rates from the various market cities (including New Orleans) to Atlanta have been established through various conferences and arbitrations, and have been in effect for a considerable number of years, and it must be assumed that the interest of these defendants are reasonably protected in rates so determined. The claim of defendants that their rates to Atlanta and their rates from Atlanta to LaGrange added together make just and reasonable through rates from New Orleans to LaGrange, would have to be fully proven, even if LaGrange were situated beyond Atlanta and more distant from New Orleans. The location of LaGrange on this short line, 71 miles southwesterly of Atlanta, and that much nearer to New

Orleans, makes defendants' claim that a combination of rates based on those to and back from Atlanta is just and reasonable for LaGrange seems almost absurd.

43 The carriers attempt to justify such combined rates for LaGrange by testimony declaring that it costs three times more to carry New Orleans traffic to LaGrange than to transport such freight to Atlanta, and by estimates of how much revenue would be lost to them if so-called competitive rates were raised to local point charges, or if LaGrange and other points were given competitive point rates. Neither of these assertions is supported by the weight of evidence.

In the matter of cost, defendants sought to burden this through traffic from New Orleans to LaGrange with the cost of local service from Montgomery to LaGrange and that of the transfer required to put it on local trains at Montgomery. The evident fact is that adding the present insignificant LaGrange freight to the otherwise required local train service from Montgomery can add but little to the cost of such service. On the other hand, it does relieve them from stopping through trains carrying traffic destined to Atlanta and various points beyond to which traffic is shipped from New Orleans and all other points via Montgomery over this part of defendants' through line. It may possibly be less expensive for the Atlanta & West Point-Western of Alabama system to carry its relatively small New Orleans-Atlanta traffic by its through freight trains from Montgomery to Atlanta, averaging about twenty cars to the train. It is probably true that this carrier can most cheaply transport the present through tonnage from New Orleans to LaGrange, amounting to only 100 tons for a given year, by its separate local train from Montgomery to LaGrange and other local stations. But elements of cost applying to other freight service are present to such degree in either case that the most expert railroad accountant cannot say which rightfully involves the greater expense. New Orleans freight to either LaGrange or Atlanta is through freight and entitled to through service, and the manner in which the carriers conduct such service cannot alter the character of such freight, so as to make the one partly local and the other wholly through.

Whether defendants would or would not lose any of their present revenue if New Orleans-LaGrange rates were reduced to the Atlanta basis is altogether a speculative question. If the tonnage to LaGrange from New Orleans should not be increased thereby, they would lose a trifling sum in a year; but

44 complainant insists that with Atlanta rates in force from New Orleans to LaGrange he would be able to

greatly increase his business and therefore his tonnage over this line, and the probabilities all favor the belief that such lower rates would increase business at LaGrange and consequently the volume of traffic over defendants' line from New Orleans to LaGrange. However this may be, if any of their profits result from wrongful practices against LaGrange or its merchants, including complainant, they must be regarded as illegally extorted.

Apart from the high rates per ton per mile afforded by defendants' LaGrange rates, which we find excessive for so long a haul as 425 miles, is the condemning fact that defendants carry for the Atlanta merchant, New Orleans freight through LaGrange to Atlanta and deliver it there to the consignee, receive it again as a new and purely local shipment, carry it 71 miles back to LaGrange, and deliver it there to the second consignee for exactly the same aggregate compensation that they exact as one charge on a single through shipment from New Orleans to LaGrange. The rates from Atlanta to LaGrange are established for purely local service, and to add that local rate to the Atlanta rate to make the rate to an intermediate station, which should ordinarily take less than the Atlanta rate, is wholly indefensible. If defendants obtain the concededly profitable Atlanta rate for 71 miles less service to LaGrange, they are obtaining all that they can reasonably or justly demand. As observed by Judges Pardee and Speer in Augusta S. R. Co. vs. Wrightsville & T. R. Co., 74 Fed. Rep. 522, "No fair or equitable construction will justify the exaction of local rates for freights not local." That was a case of descrimination between connecting railway lines, while this is one of unreasonable rates and discrimination against one city in favor of another. It is a case where, on a delivering road paying an annual return of 12 per cent. to its stock holders, it is contended that rates from a market city to a competitive point on that road, agreed to by all competing carriers, long enforced, and shown to be profitable, are not sufficient compensation for carrying from the same market to a much less distant point on that road; and that the local rates back from the competitive point must be added thereto in order to arrive at a proper charge for transportation to the intermediate locality.

45 In conclusion, it is again observed that the defendants charge on New Orleans traffic more for the shorter distance to LaGrange than for the longer distance over the same line to either Hogansville, Newnan, Palmetto or Fairburn, which points are not served by other carriers, or else, as at LaGrange, competition is not permitted by the carriers to affect rates. This results in relatively unreasonable and unduly

preferential rates whereby the natural advantage of location possessed by LaGrange is overcome and complainant and other dealers in that city are subjected to palpable disadvantage. These rates also violate the long and short haul clause of the law. At LaGrange the transportation conditions and circumstances are substantially the same as those prevailing at either Hogansville, Newnan, Palmetto or Fairburn. These places are nearer to Atlanta, while LaGrange is the same distance nearer to New Orleans, where the traffic originates. Under the most liberal construction of the fourth section, the higher rates for the shorter distance to LaGrange cannot be justified.

But while, under the allegations of the complaint and upon the evidence, it appears that the higher rates to LaGrange than to Fairburn and the other longer-distance stations mentioned violate the fourth, third and first sections, the case reaches farther on to the reasonableness of the LaGrange rates in themselves and their justice as compared with defendants' rates to Atlanta. In this branch of the case the fourth section is not invoked. The questions of fact and law there involved arise only under sections one and three, and as above found and held those sections are violated by the rates in question.

Upon the evidence and findings, the complaint is held fully sustained, and suitable order will be entered requiring the carriers to cease and desist from the unreasonableness, injustice, wrongful prejudice, undue disadvantage, and greater charges for shorter than for longer distances, hereinbefore found and set forth in this report.

46 EXHIBIT "D."

At a general session of the Interstate Commerce Commission, held at its office in Washington, D. C., on the 31st day of December, A. D. 1897.

Present: Hon. William R. Morrison, chairman; Hon. Martin A. Knapp, Hon. Judson C. Clements, Hon. James D. Yeomans, and Hon. Charles A. Prouty, Commissioners.

Fuller E. Calloway
vs.
The Louisville and Nashville Railroad Company, The Western Railway Company of Alabama, The Atlanta and West Point Railroad Company.

This case being at issue upon complaint and answers on file, and having been duly heard, and submitted by the parties, and

full investigation of the matters and things herein involved having been had, and the commission having, on the date hereof, made and filed a report and opinion containing its findings of fact and conclusions herein:

It is ordered and adjudged that the report and opinion of the commission on file herein be, and the same is hereby, made a part of this order, and that the defendants, The Louisville and Nashville Railroad Company, The Western Railway of Alabama, and The Atlanta and West Point Railroad Company, do wholly cease and desist from each and every of the violations of law therein found and set forth.

It is further ordered and adjudged that said defendants, The Louisville and Nashville Railroad Company, The Western Railway of Alabama, and The Atlanta and West Point Railroad Company, do more particularly cease and desist from violations of the law, so found and set forth in said report and opinion as follows, to-wit:

1. That said defendants and each of them cease and desist from charging, demanding, collecting, or receiving rates for the transportation of the several kinds or classes of freight from New Orleans, La., to LaGrange, Ga., which, as a whole, or upon any article of merchandise, are in any respect unreasonable or unjust.

2. That said defendants and each of them cease and desist from charging, demanding, collecting, or receiving the following unreasonable, unjust, and unlawful rates for the transportation from New Orleans, La., to LaGrange, Ga., of
47 articles embraced in the various classes of their freight classifications; that is to say:

Classes; rates in cents per 100 pounds.												Per barrel.
1.	2.	3.	4.	5.	6.	A.	B.	C.	D.	E.	H.	F.
143	124	109	93	74	59	41	48	33	1-229	66	74	59

3. That said defendants and each of them cease and desist from charging, demanding, collecting, or receiving rates or charges for the transportation of freight articles from New Orleans, La., to LaGrange, Ga., which are equal to rates or charges contemporaneously in force over their railroads on like traffic carried from New Orleans through LaGrange to Atlanta, Ga., added to local rates in force on such traffic for local service over the Atlanta and West Point Railroad back from Atlanta to LaGrange, such combined rates having been found and held in and by said report and opinion of the commission herein to be

unreasonable, unjust, unduly prejudicial, and unlawful, and so unreasonable, unjust, unduly prejudicial, and unlawful to the extent of such added local charges of the defendant the Atlanta and West Point Railroad Company.

4. That said defendants, and each of them, cease and desist from charging, demanding, collecting, or receiving any greater compensation in the aggregate for the transporting of freight articles from New Orleans, La., for the shorter distance to LaGrange, Ga., than they contemporaneously charge, demand, collect, or receive for transporting the like kind of freight traffic from New Orleans for the longer distance over the same line in the same direction to Hogansville, or Newnan, or Palmetto, or Fairburn, Ga., the shorter being included within the longer distance.

5. That said defendants, and each of them, cease and desist from charging, demanding, collecting, or receiving unreasonable, unjust, unduly prejudicial, and unlawful rates for the transportation of freight articles from New Orleans to LaGrange which are higher than aggregate rates contemporaneously charged, demanded, collected, or received by them, or either of them, for the transportation of like kind of freight from New Orleans to Hogansville, or from New Orleans to Newnan, or from New Orleans to Palmetto, or from New Orleans to Fairburn.

6. That said defendants, and each of them, in the transportation of freight articles from New Orleans, cease and desist from charging and collecting rates or compensation which subject complainant and other dealers and consignees at LaGrange, Ga., their traffic, or the city of LaGrange itself, to undue and unreasonable prejudice or disadvantage in any respect whatsoever, and also cease and desist from giving any undue
48 or unreasonable preference or advantage to merchants, dealers, and consignees at Atlanta, Fairburn, Palmetto, Newnan, or Hogansville, or to their traffic or to either of such cities or localities, namely, Atlanta, Fairburn, Palmetto, Newnan, or Hogansville, as against complainant and said other dealers and consignees at LaGrange, or the city of LaGrange itself.

And it is further ordered and adjudged that said defendants be, and they severally are hereby, recommended to so revise their schedules of rates and charges that the aggregate compensation charged and collected by them for the transportation from New Orleans to LaGrange of freight articles embraced in the several freight classes shall not exceed reasonable, just, and lawful class rates in cents per hundred pounds and per barrel on Class F as follows, to-wit:

Class	1.	2.	3.	4.	5.	6.	A.	B.	C.	D.	E.	H.	F.
Rates	103	88	77	64	52	42	24	31	24	20	44	49	40

and that they make corresponding reductions or relatively reasonable and just charges in commodity rates, otherwise known as exceptions to class rates, from New Orleans to LaGrange, aforesaid.

And it is further ordered, that a notice embodying this order be forthwith sent to each of the defendant corporations, together with a copy of the report and opinion of the commission herein in conformity with the fifteenth section of the act to regulate commerce.

Office of the Interstate Commerce Commission,
Washington, D. C., July 15, 1898.

I, Edward A. Moseley, secretary of the Interstate Commerce Commission, hereby certify that the foregoing exhibits, four in number, and marked, respectively, "A," "B," "C," "D," are correct copies of the originals thereof on file among the records of the Interstate Commerce Commission.

In testimony whereof, I have hereunto set my hand and affixed the seal of the Interstate Commerce Commission at the City of Washington in the District of Columbia, this 15th day of July, 1898. EDW. A. MOSELEY.

A true copy of the petition and exhibits.

EDW. A. MOSELEY,

[Seal] Secretary of the Interstate Commerce Commission.

Filed July 23rd, A. D. 1898. RICHARD JONES,
Clerk.

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49 MOTION OF THE COMPLAINANT FOR PRELIMINARY ORDER.

The Interstate Commerce Commission

vs. No. 207, in Equity.

The Louisville & Nashville Railroad Co., Western Railway of Alabama, and the Atlanta & West Point Railroad Company.

And now comes the Intersate Commerce Commission, complainant in the above entitled cause, by M. D. Wickersham, United States District Attorney for the Southern District of Alabama, and moves the Court for an order directing the man-

ner of service of the complaint in said cause and of this motion and order thereon, and requiring each of the defendants to file their answers to said bill of complaint on or before a day certain to be fixed by the Court, and also to appear before the Court here at Mobile, Alabama, at such time as may be named by the Court, then and there to show cause why such other preliminary orders as to the Court may seem proper, shall not be entered.

Filed July 23rd, A. D. 1898. RICHARD JONES, Clerk.

ORDER OF COURT ON MOTION FOR PRELIMINARY ORDERS.

The Interstate Commerce Commission

vs. No. 207, in Equity.

The Louisville & Nashville Railroad Co., Western Railway of Alabama and the Atlanta & West Point Railroad Company.

Upon the filing of the bill of complaint and the accompanying motion herein, it is ordered, that the secretary of the Interstate Commerce Commission be and is hereby authorized to serve notice of said bill of complaint and the accompanying motion and this order, by registering and depositing in the mails of the United States true copies thereof, duly authenticated under the seal of the said Interstate Commerce Commission, and correctly addressed to the said defendants, respectively, or to the president or one of the vice-presidents, or secretary of said defendants, respectively.

It is also ordered that each of the said defendants file their answers, if they be so advised, to said bill of complaint on or before the first Monday of November, A. D. 1898, and also appear before the Court here at Mobile, Alabama,
50 on the fourth Monday of November, A. D. 1898, and show cause why such other and further preliminary orders as to the Court may seem proper should not be entered.

Done this 23rd day of July, A. D. 1898.

HARRY T. TOULMIN, U. S. District Judge.

Filed July 23, A. D. 1898, and entered on the Minutes page 675. RICH'D JONES, Clerk.

CERTIFICATE OF SERVICE ON THE DEFENDANTS.

The Interstate Commerce Commission
vs. No. 207, in Equity.
The Louisville & Nashville Railroad Co., et al.

(Copy.)

Motion of Complainant for Preliminary Order.

And now comes the Interstate Commerce Commission, complainant in the above entitled cause, by M. D. Wickersham, United States District Attorney for the Southern District of Alabama, and moves the Court for an order directing the manner of service of the complaint in said cause and of this motion and the order thereon, and requiring each of said defendants to file their answers to said bill of complaint on or before a day certain to be fixed by the Court, and also to appear before the Court here at Mobile, Alabama, at such time as may be named by the Court, then and there to show cause why such other preliminary orders as to the Court may seem proper, shall not be entered.

Filed this July 23rd, A. D. 1898.
RICHARD JONES, Clerk.

Copy. Order of Court on the Motion for Preliminary Order.

Upon the filing of the bill of complaint and the accompanying motion herein, it is ordered, that the secretary of the Interstate Commerce Commission be and is hereby authorized to serve notice of said bill of complaint and the accompanying motion and this order, by registering and depositing in the mails of the United States true copies thereof, duly authenticated under the seal of the said Interstate Commerce Commission, and correctly addressed to the said defendants, respectively, or to the president or one of the vice-presidents, or the secretary of said defendants, respectively.

It is also ordered that each of the said defendants file their answers, if they be so advised, to said bill of complaint on or before the first Monday of November, A. D. 1898, and also appear before the Court here at Mobile, Alabama,
51 on the fourth Monday of November, A. D. 1898, and show cause why such other and further prelim-

inary orders as to the Court may seem proper should not be entered.

Done this 23rd day of July, A. D. 1898.

(Marked) (Signed) HARRY T. TOULMIN,
U. S. District Judge.

Filed this the 23rd day of July, A. D. 1898.
RICHARD JONES, Clerk.

I, Richard Jones, Clerk of the Court aforesaid, hereby certify that the above order is a full and true copy of the order in Equity, case No. 207, made and entered of record this day in said cause.

Witness my hand and seal of said Court affixed this 23rd day of July, A. D. 1898. RICHARD JONES,
[Seal] Clerk U. S. Circuit Court, Southern Dist. of Alabama.

A true copy. EDWARD A. MOSELEY,
Secretary of the Interstate Commerce Commission.
Washington, D. C., July 25th, 1898.

CERTIFICATE OF SERVICE.

The Interstate Commerce Commission
vs. No. 207, in Equity.
The Louisville & Nashville Railroad Co., The Western Railway of Alabama, and the Atlanta & West Point Railroad Company.

I, Edward A. Moseley, Secretary of the Interstate Commerce Commission, do hereby certify that service of the petition in this case, the motion of petitioner filed herein on the 23rd day of July, A. D. 1898, and the order of the Court thereon, duly authenticated, under the seal of the said Interstate Commerce Commission, as appears by copies of said petition, motion, and order annexed hereto, has been made by me pursuant to the terms of said order, to-wit:

By registering and depositing in the mails of the United States at Washington, D. C., on the 25th day of July, 1898, true copies thereof, duly authenticated as aforesaid, and correctly addressed to the defendants in this case who are natural persons or to the president of each of the corporate defendants in this cause, that is to say, the Louisville & Nashville Railroad

Company, Louisville, Kentucky; M. M. Smith, president of the Louisville & Nashville Railroad Company, Louisville, Kentucky; the Western Railway of Alabama, Atlanta, Georgia; Geo. C. Smith, president of the Western Railway of Alabama, Atlanta, Georgia; the Atlanta & West Point Railroad Company, Atlanta, Georgia; Geo. C. Smith, president of the Atlanta & West Point Railroad Company, Atlanta, Georgia.

In testimony whereof I have hereunto set my hand and affixed the seal of the Interstate Commerce Commis-
52 sion at Washington, D. C., this the 25th day of July, in the year of our Lord, one thousand eight hundred and ninety-eight. EDW. A. MOSELEY,

[Seal] Secretary, Interstate Commerce Commission.

Received and filed July 27th, A. D. 1898.
RICHARD JONES, Clerk.

ANSWER OF THE DEFENDANTS, THE LOUISVILLE & NASHVILLE RAILROAD COMPANY, THE WESTERN RAILWAY OF ALABAMA AND THE ATLANTA & WEST POINT RAILROAD COMPANY.

In the Circuit Court of the United States for the Southern District of Alabama.

The joint and several answer of the Louisville and Nashville Railroad Company; the Western Railway Company of Alabama; and the Atlanta & West Point Railroad Company, to the bill of complaint or petition, filed by the Interstate Commerce Commission against these respondents in the Circuit Court of the United States for the Southern District of Alabama, in Equity No. 207.

Respondents saving and reserving unto themselves the benefit of all exceptions to the many errors and insufficiencies in said bill or petition contained, for answer, thereunto, or unto so much thereof as they are advised it is material for them to answer, answering say:

I.

Respondents admit that said Louisville & Nashville Railroad Company is a corporation created, chartered and existing under and by virtue of the laws of the State of Kentucky; and that it has its principal office at Louisville in said state.

Respondents admit that said Western Railway of Alabama is a corporation created, chartered and existing under and by

virtue of the laws of the State of Alabama; but they aver that its principal office is at Montgomery in said State of Alabama, and not at Atlanta in the State of Georgia, as is erroneously stated in said bill or petition.

Respondents admit that said Atlanta & West Point Railroad Company is a corporation created, chartered and existing under and by virtue of the laws of the State of Georgia; and that it has its principal office at Atlanta in said state.

53 II.

Respondents admit that on the 16th day of October, 1895, and ever since, they were and have been, severally, common carriers, engaged in the transportation of persons and property by their respective railroads; that they transport some persons and some property under joint through rates, and as members of continuous through lines, between points in different states; between New Orleans in the State of Louisiana, and LaGrange in the State of Georgia, and also between New Orleans in the State of Louisiana, and Hogansville, Newnan, Palmetto, Fairburn and Atlanta, in the State of Georgia.

III.

Respondents admit that heretofore, on or about the 25th day of October, 1895, one Fuller E. Calloway, a citizen of, and a merchant doing business in the said City of LaGrange, in the State of Georgia, made and filed a complaint or petition to said Interstate Commerce Commission, alleging violations on the part of respondents of certain provisions of the Act to Regulate Commerce, as at large and more fully appears in and by the said complaint or petition of said Calloway, on file in the office of said commission, a copy whereof is annexed to and made part of the bill of complaint or petition filed in this Court as Exhibit "A" thereto.

A copy of said complaint or petition of said Calloway, similar to said Exhibit "A" attested by the secretary of said commission under the seal of said commission, was duly forwarded by said commission to each of respondents.

IV.

Respondents admit that afterwards, on or about December 5, 1895, they filed their joint and several answer to the said complaint or petition of said Calloway, as at large and more fully appears in and by said answer on file in the office of said commission, a copy of which answer is annexed to, and made part of the bill of complaint or petition filed in this Court, as Exhibit "B" thereto.

Respondents hereby refer to said answer, and to the copy thereof filed as Exhibit "B," and state that the averments thereof are true, whether they contain matter of denial, or new matter; and respondents hereby rely upon each and all of said averments as fully as though the same were herein specifically repeated.

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V.

Respondents admit that afterwards, the said matter in controversy, being at issue upon said complaint or petition of said Calloway, and said answer thereto, filed by respondents, duly came on for investigation and hearing before said commission at Atlanta, in the State of Georgia, on or about the 9th day of November, 1896, when said Calloway, as well as respondents, duly appeared before said commission.

VI.

Respondents deny that at said hearing, or at any other time, it was made to appear to the satisfaction of said commission, or that it was true as a matter of fact, that respondents or either of them had violated the provisions of said act in certain respects, or in any respect, as was alleged in said complaint or petition of said Calloway or otherwise; or that the rates of respondents, complained of in said petition or complaint of said Colloway, from New Orleans to LaGrange were excessive, unreasonable or unjust, either in themselves, or relatively as compared with the rates charged by respondents from New Orleans to Hogansville, Newnan, Palmetto, Fairburn and Atlanta; or that said rates from New Orleans to LaGrange subjected said Calloway or any other merchant or dealer at LaGrange or in its vicinity, or the traffic thereto, or therefrom, to any undue or unreasonable prejudice or disadvantage; or gave any undue or unreasonable preference or advantage to any merchant or dealer at Hogansville, Newnan, Palmetto, Fairburn or Atlanta, or to traffic thereto or therefrom; or that said rates from New Orleans to LaGrange were in violation of the rule of section 4, or of any other section of said act.

VII.

Respondents deny that said commission, on the 31st day of December, 1897, or at any other time, duly or legally determined the matters and things as aforesaid, in controversy, or at issue, between the said parties before it. On the contrary, respondents are advised and insist that such determination of said matters and things as was made by said commission was undue, illegal and void.

Respondents admit that said commission made a report in

writing in respect of said matters and things, as at large and more fully appears in and by said report of said commission on file in the office of said commission; and that a
55 copy of said report is annexed to, and made part of the bill of complaint or petition filed in this Court as Exhibit "C" thereto.

Respondents admit that said report included certain so-called findings of fact, upon which certain so-called conclusions of said commission were claimed to be based; but respondents deny that what were found as facts by said commission were or are true; and they are advised and insist that said so-called conclusions were incorrectly drawn even from said so-called findings of fact, erroneously found as aforesaid.

VIII.

Respondents admit that on or about the 31st day of December, 1897, said commission formulated an order and notice in relation to the matters and things stated and charged in said complaint or petition of said Calloway; said order and notice were based upon said erroneous findings, and illegal determination of said commission with respect thereto; and a copy of said order and notice is annexed to, and made part of the bill of complaint or petition filed in this Court as Exhibit "D" thereto.

Respondents are advised and insist that said order and notice were not duly formulated, and were never in force or effect; because the same were and are illegal and void.

IX.

Respondents admit that afterward said commission duly caused a properly authenticated copy of its said report and opinion (Exhibit "C") together with a copy of said order and notice (Exhibit "D",) to be delivered to each of respondents; but they deny that they have been in any respect unmindful of their duty in regard thereto.

They admit that they, through their officers, servants and attorneys have wholly disregarded and set at naught said order; that they have knowingly violated and disobeyed the same; and that they still neglect and refuse to comply with the same, as to their rates over their line through the Southern Judicial District of Alabama from New Orleans to LaGrange, and over said line from New Orleans to Hogansville, Newnan, Palmetto, Fairburn and Atlanta; and their reason for disregarding and disobeying said order is that it was and is
56 illegal and void.

X.

Respondents deny that any of the said rates complained of from New Orleans to LaGrange were, at the date of said order (Exhibit "D,") or are now, in violation of section 1 of said act; or that they were or are excessive, unjust or unreasonable in themselves. On the contrary, respondents aver that each and all of said rates are just and reasonable in themselves.

Respondents deny that any of the said rates complained of from New Orleans to LaGrange and to Hogansville, Newnan, Palmetto, Fairburn and Atlanta, were, at the date of said order, or are now, relatively unjust or unreasonable, or that they gave or give to Hogansville, Newnan, Palmetto, Fairburn or Atlanta, or either of them, any undue preference or advantage over LaGrange; or then subjected, or now subject LaGrange, to any unjust prejudice or disadvantage; or were or are, in violation of section 3 of said act. On the contrary, respondents aver that said rates are not only just and reasonable in themselves, but that they are also relatively just and reasonable, and constructed in full accord with the letter as well as with the spirit of the third section of said act.

Respondents deny that said rates were, at the date of said order, (Exhibit "D") or are now, in violation of section 4 of said act.

It is true that said rates were, and are higher for the shorter haul from New Orleans to LaGrange, than for the longer haul over the same line through LaGrange to Hogansville, Newnan, Palmetto, Fairburn and Atlanta; and it is true that the shorter haul to LaGrange is included within the longer haul to Hogansville, Newnan, Palmetto and Atlanta. But transportation of property from New Orleans to LaGrange is not conducted under circumstances and conditions which are substantially similar to those under which transportation of property from New Orleans to Hogansville, Newnan, Palmetto, Fairburn or Atlanta is conducted.

XI.

Respondents aver that respondent, the Louisville & Nashville Railroad Company operates a railroad from New Or-
57 leans, Louisiana, to Montgomery, Alabama; respondent, the Western Railway of Alabama, operates a railroad from Montgomery, Alabama, to West Point, Georgia; and respondent, the Atlanta & West Point Railroad Company, operates a railroad from West Point to Atlanta, Georgia.

LaGrange, Hogansville, Newnan, Palmetto and Fairburn are all local stations, situated on the Atlanta & West Point Railroad between Montgomery, Alabama, and Atlanta, Georgia, beginning at Montgomery and going east:

LaGrange is 104 miles from Montgomery;
Hogansville 117 miles from Montgomery;
Newnan is 136 miles from Montgomery;
Palmetto is 150 miles from Montgomery;
Fairburn is 157 miles from Montgomery.

Freight shipped from New Orleans over the several above described roads of respondents, destined to LaGrange would, if rates could be controlled by distance alone, be charged lower rates than freight shipped from New Orleans to any other one of said local stations. In fact, the rates from New Orleans to said local stations respectively would increase as the respective distances of said local stations from New Orleans increase, provided the distance which such freight is carried could operate as a controlling factor in making said rates.

But while it is true that rates from New Orleans to LaGrange would be lower than rates from New Orleans to any other one of said local stations, if distance alone could control; yet it is also true that rates from New Orleans to LaGrange, as well as rates from New Orleans to said other local stations would be materally higher than the rates which are complained of in this case.

If rates from New Orleans to LaGrange, and said other local stations, could be made by combining the competitive rates from New Orleans to Montgomery, Alabama, with reasonable local rates based on distance from Montgomery to LaGrange and said other local stations respectively, such combination rates would be materially lower than rates based on distance all the way from New Orleans; though even such combination rates would be materially higher than the rates complained
58 in this case.

Montgomery is situated on the Alabama River, which is navigable for steamboats all the year from Montgomery to the Gulf of Mexico. Montgomery is a city of great commercial importance, where numerous competiting lines of railroad center. The competition at Montgomery is actual and effective, and it compels the acceptance of rates from New Orleans to Montgomery, which are less than might be reasonably charged but for such competition; and less than would be charged if it were possible to adjust them on the basis of the distance from New Orleans to Montgomery, without regard to the competition which exists at the latter place.

If the rates from New Orleans to LaGrange, Hogansville, Newnan, Palmetto and Fairburn were made by combining the competitive rates from New Orleans to Montgomery with reasonable local rates based on the distance from Montgomery to

said local stations respectively, each of said local stations would get the full benefit of all competition which exists at Montgomery, notwithstanding said local stations are distant from Montgomery from 104 to 157 miles;—though such combination rates would, as above stated, be materially higher than the rates complained of in this case.

The following table shows what said combination rates would be if rates from New Orleans to LaGrange and said other local stations could be made by combining the competitive rates from New Orleans to Montgomery with reasonable local rates based on distance from Montgomery to LaGrange and said other local stations respectively:

Rates from New Orleans, La., to certain local stations on the Atlanta and West Point Railroad, arrived at by adding Rates from New Orleans, La., to Montgomery, Ala., to Rates from Montgomery to said Local Stations:

Table A.

	Classes, rates per 100 pounds.												Per barrel.
	1.	2.	3.	4.	5.	6.	A.	B.	C.	D.	E.	H.	F.
New Orleans to Montgomery...	94	88	74	59	48	37	24	27	20	16	44	29	32
Montgomery to LaGrange.. ..	75	65	59	45	38	31	31	33	27	22.5	41	45	52.5
New Orleans to LaGrange.	169	153	133	104	86	68	55	60	47	38.5	85	74	84.5
New Orleans to Montgomery...	94	88	74	59	48	37	24	27	20	16	44	29	32
Montgomery to Hogansville . . .	81	70	63	51	41	33	33	35	28.5	23.5	44	51	55
New Orleans to Hogansville.	175	158	137	110	89	70	57	62	48.5	39.5	88	80	87
New Orleans to Montgomery...	94	88	74	59	48	37	24	27	20	16	44	29	32
Montgomery to Newnan.. . . .	88	77	70	56	46	35	35	37	25.5	24	49	56	51
New Orleans to Newnan...	182	165	144	115	94	72	59	64	45.5	40	93	85	83
New Orleans to Montgomery...	94	88	74	59	48	37	24	27	20	16	44	29	32
Montgomery to Palmetto.... ..	91	80	72	58	47	36	36	38	30	25.5	46	58	58
New Orleans to Palmetto..	185	168	146	117	95	73	60	65	50	41.5	90	87	90
New Orleans to Montgomery...	94	88	74	59	48	37	24	27	20	16	44	29	32
Montgomery to Fairburn..	95	83	74	60	48	38	36	40	30.5	26	45	60	59
New Orleans to Fairburn..	189	171	148	119	96	75	60	67	50.5	42	89	89	91

59 It will be noticed that the rates which respondents would realize if rates from New Orleans to LaGrange and said other local stations could be made by combining the competitive rates from New Orleans to Montgomery with reasonable local rates based on the distance from Montgomery to LaGrange and said other local stations respectively, would be very materially higher than the rates now actually charged by them and which are complained of in this case. It would therefore be manifestly to the advantage of respondents to use such combination rates if it were possible for them to do so.

Respondents will now show why it is not possible to base said rates either on the distance all the way from New Orleans, or even on the distance from Montgomery; and why respondents are compelled to accept rates which are very much lower than they would be if respondents could utilize the distance either from New Orleans or from Montgomery as a controlling factor in making said rates.

XII.

Respondents respectfully show that Atlanta, Georgia, is the pivotal point for rate making into and out of the territory south of the Ohio River, and east of the Mississippi River.

Every class of freight that is shipped from New Orleans through Montgomery to LaGrange, Hogansville, Newnan, Palmetto and Fairburn, is shipped in competition with freight of the same classes which reaches said stations through Atlanta, from Baltimore, Philadelphia, New York, Boston, and other supply markets in the northeast.

The all-rail rates on every class of freight from Baltimore, Philadelphia, New York, Boston and other northeastern supply markets to Atlanta are controlled by the low competitive rates accepted by steamships and trading vessels from Baltimore, Philadelphia, New York and Boston to Savannah; and by steamboats on the Savannah River from Savannah to Augusta; added to rail-rates which cannot exceed those established by the Georgia Railroad Commission from Augusta to Atlanta, Baltimore, Philadelphia, New York, Boston and other northeastern supply markets compete actively and effectively with each other for the trade of Atlanta; and numerous
60 carriers, whose lines extend from Baltimore, Philadelphia, New York, Boston and other northeastern supply markets to Atlanta compete actively and effectively with each other for the carriage of the traffic passing between said points. Some of said carriers are all-rail, while others are part rail and part water.

The competition between Baltimore, Philadelphia, New York, Boston and other northeastern supply markets, as well as the

competition between the numerous carriers whose lines extend from said markets to Atlanta, is not only active, aggressive and effective, but it is highly beneficial to the public.

XIII.

Respondents respectively show that Cincinnati, Ohio, Louisville, Kentucky, Evansville, Indiana, and other important supply markets are situated on the Ohio River; and they have lines of railway which extend to Atlanta.

Every class of freight that is shipped from New Orleans, through Montgomery to LaGrange, Hogansville, Newnan, Palmetto and Fairburn, is shipped in competition with the same classes of freight reaching said stations through Atlanta from Cincinnati, Louisville, Evansville and other supply markets on the Ohio River.

Cincinnati, Louisville, Evansville and other Ohio River supply markets not only compete with each other, but they also compete with Baltimore, Philadelphia, New York, Boston and other northeastern supply markets for the trade of Atlanta. And the various rail carriers whose lines extend from Cincinnati, Louisville, Evansville and other Ohio River supply markets to Atlanta not only compete with each other for the carriage of traffic passing between the Ohio River and Atlanta, but they use every effort to induce Atlanta merchants to purchase their supplies in the northwest so that said rail-carriers may secure the transportation of said supplies. The result is that there is active, aggressive and effective competition as between the rail carriers whose lines extend from Cincinnati, Louisville, Evansville and other Ohio River supply markets to Atlanta, as against the carriers whose lines extend from Baltimore, Philadelphia, New York, Boston and other northeastern supply markets to Atlanta; and such competition is highly beneficial to the public.

61

XIV.

Respondents respectfully show that New Orleans is situated on the Mississippi River, with deep water navigation to the ocean. There are also a number of railways centering at that point. The result is that New Orleans is an important supply market, and her merchants naturally desire to compete in Atlanta with the merchants of Baltimore, Philadelphia, New York, Boston and other northeastern supply markets, as well as with the merchants of Cincinnati, Louisville, Evansville and the other Ohio River supply markets.

In order to enable the New Orleans merchants to compete in the Atlanta market, it becomes absolutely necessary that re-

spondents and other rail carriers whose roads extend from New Orleans to Atlanta shall offer rates on the various classes of freight, which bear a certain relation to the rates which are accepted by the carriers whose lines extend from Baltimore, Philadelphia, New York, Boston and other northeastern supply markets to Atlanta; and also to the rates which are accepted by the rail carriers whose lines extend from Cincinnati, Louisville, Evansville and other Ohio River supply markets to Atlanta.

If respondents and the other carriers whose roads extend from New Orleans to Atlanta should materially increase the rates between those points it would be impossible for the New Orleans merchants to sell in the Atlanta market in competition with the merchants of Baltimore, Philadelphia, New York, Boston and other northeastern supply markets, or in competition with the merchants of Cincinnati, Louisville, Evansville and other Ohio River supply markets. Such an increase of rates would not only drive New Orleans out of the Atlanta market, but it would also prevent respondents and other carriers from getting any traffic for transportation from New Orleans to Atlanta.

XV.

From the foregoing statement it will be seen that the rates which can be obtained by respondents for the transportation of the various classes of freight from New Orleans
62 to Atlanta are controlled absolutely by the following competitive circumstances and conditions, viz:

First.

Competition Between Markets.

(a.) The competition between Baltimore, Philadelphia, New York, Boston and other northeastern supply markets as against each other for the trade of Atlanta.

(b.) The competition between Cincinnati, Louisville, Evansville and other Ohio River supply markets, as against each other, for the trade of Atlanta.

(c.) The competition of Baltimore, Philadelphia, New York, Boston and other northeastern supply markets, as against Cincinnati, Louisville, Evansville and other Ohio River supply markets; and also as against New Orleans, a supply market, for the trade of Atlanta.

Second.

Competition Between Carriers.

(a.) The competition, as against each other, of the various carriers, whose lines extend from Baltimore, Philadelphia, New York, Boston and other northeastern supply markets to Atlanta.

(b.) The competition, as against each other, of the various carriers, whose lines extend from Cincinnati, Louisville, Evansville and other Ohio River supply markets to Atlanta.

(c.) The competition, as against each other, of the various carriers, whose lines extend from New Orleans to Atlanta.

(d.) The competition, as against each other, of the several classes of carriers above designated as a, b and c.

The competitive circumstances and conditions, above referred to, have existed for many years, and have resulted in establishing certain relative rates from said various supply
63 markets to the City of Atlanta. The relation existing between said rates is as follows:

First. The rates on the numbered classes from Boston, New York and Philadelphia to Atlanta are certain fixed differentials higher than the rates from Baltimore to Atlanta.

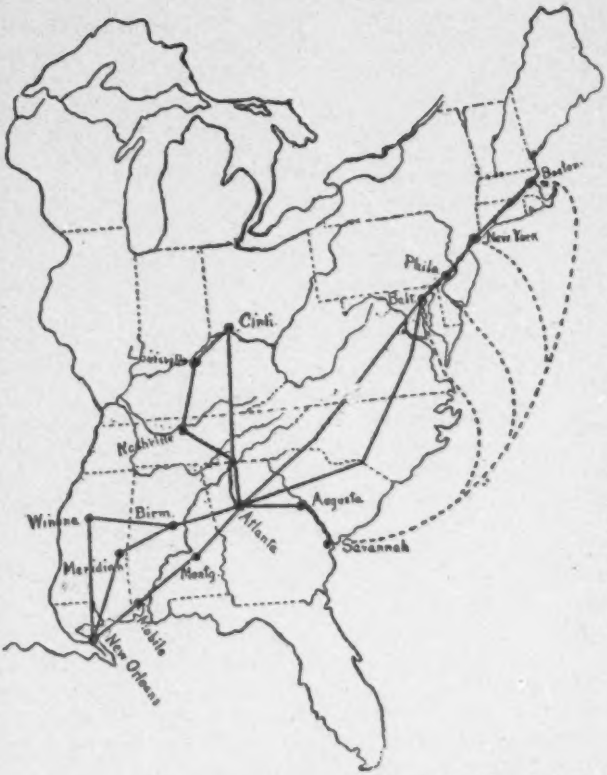
Second. The rates on the numbered classes from Cincinnati, and from Louisville to Atlanta are made as low as the rates from Baltimore to Atlanta.

Third. The rates on the numbered classes from New Orleans to Atlanta are made 4 cents per hundred pounds less than the rates from Cincinnati and Louisville to Atlanta.

The relation existing between said rates is the result of frequent and destructive rate-wars between the rival carriers in the past; and any attempt to disturb said relation would immediately lead to a repetition of such wars; to the great injury of the public as well as of said carriers.

The following diagram (No. 1) sufficiently represents the relative position of said various supply markets, with reference to Atlanta; and it also shows the lines of some of the competing carriers which extend from said supply markets respectively to Atlanta:

DIAGRAM No. 1



64 A glance at said diagram, in connection with the relative adjustment of rates above referred to, will show that it is impossible to increase the rates from New Orleans to Atlanta, without driving New Orleans and her carriers out of the Atlanta market,—unless the rates from said other supply markets to Atlanta shall be increased accordingly.

XVI.

The same competitive circumstances and conditions above referred to have also resulted in establishing similar relations between the rates from said various supply markets, respectively, to the City of Montgomery; and between the rates from

said various supply markets, respectively, to Atlanta, as compared with the rates from the same markets to Montgomery.

The following table B will show the relation which has been established between the rates from New Orleans to Montgomery and the rates from New Orleans to Atlanta:

Table B—Rates from New Orleans to Montgomery, as compared with rates from New Orleans to Atlanta.

	Classes												
	1.	2.	3.	4.	5.	6.	A.	B.	C.	D.	E.	H.	F.
New Orleans to Montgomery...	94	88	74	59	48	37	24	27	20	16	44	29	32
New Orleans to Atlanta.... ..	103	88	77	64	52	42	24	31	24	20	44	49	40

It is impossible to increase the rates from New Orleans to Atlanta without making a corresponding increase in the rates from New Orleans to Montgomery; as to do so, would give to Montgomery an undue advantage of Atlanta, in the competition which has for many years existed between those two cities as rival markets of consumption.

XVII.

The relation which exists between the rates from New Orleans to Montgomery, and the rates from New Orleans to Atlanta, having been established by the competitive circumstances

and conditions above referred to, local non-competitive stations, such as LaGrange, Hogansville, Newnan, Palmetto and Fairburn, situated between Montgomery and Atlanta, in
65 shipping from New Orleans, have the choice between rates made by combining the competitive rates from New Orleans to Montgomery with reasonably low local rates from Montgomery to said stations respectively (as shown in table A;) and rates made by combining the competitive rates from New Orleans to Atlanta with reasonably low local rates from Atlanta to those stations respectively (as shown below in table C:)

Table C.—Rates from New Orleans to certain local stations on the Atlanta and West Point Railroad, arrived at by adding rates from New Orleans, La., to Atlanta, Ga., to rates from Atlanta to said local stations:

	Classes.												
	1.	2.	3.	4.	5.	6.	A.	B.	C.	D.	E.	H.	F.
New Orleans to Atlanta	103	88	77	64	52	42	24	31	24	20	44	49	40
Atlanta to LaGrange	40	36	32	29	22	17	17	17	9.5	9	22	..	19
New Orleans to LaGrange	143	124	109	93	74	59	41	48	33.5	29	66	74	59
New Orleans to Atlanta	103	88	77	64	52	42	24	31	24	20	44	49	40
Atlanta to Hogansville	36	33	30	26	21	15	15	15	9	8.5	21	26	18
New Orleans to Hogansville	139	121	107	90	73	57	39	46	33	28.5	65	75	58
New Orleans to Atlanta	103	88	77	64	52	42	24	31	24	20	44	49	40
Atlanta to Newnan	30	26	24	22	18	13	13	13	8	7.5	18	22	16.5
New Orleans to Newnan	133	114	101	86	70	55	37	44	32	27.5	62	71	56.5
New Orleans to Atlanta	103	88	77	64	52	42	24	31	24	20	44	49	40
Atlanta to Palmetto	24	22	20	18	14	12	12	12	7.5	6.5	14	18	15
New Orleans to Palmetto	127	110	97	82	66	54	36	43	31.5	26.5	58	67	55
New Orleans to Atlanta	103	88	77	64	52	42	24	31	24	20	44	49	40
Atlanta to Fairburn	22	20	18	15	13	11	11	11	7	6	13	15	14
New Orleans to Fairburn	125	108	95	79	65	53	35	42	31	26	57	64	54

A comparison between tables A and C will show that lower rates to LaGrange, Hogansville, Newnan, Palmetto and Fair-

burn can be obtained from New Orleans via Atlanta, than via Montgomery. Such a comparison is made in the following table:

Table D.—Rates from New Orleans, La., to certain local stations on the Atlantic and West Point Railroad, via Montgomery, compared with rates from New Orleans to said local stations via Atlanta:

	Per 100 pounds.													bar-rel.
	1.	2.	3.	4.	5.	6.	A.	B.	C.	D.	E.	H.	F.	
New Orleans to LaGrange, via Montgomery	169	153	133	104	86	68	55	60	47	38.5	85	74	84.5	
New Orleans to LaGrange via. Atlanta	143	124	109	93	74	59	41	48	33.5	29	66	74	59	
Difference, favor Atlanta	26	29	24	11	12	9	14	12	13.5	9.5	19	—	25.5	
New Orleans to Hogansville, via Montgomery	175	158	137	110	89	70	57	62	48.5	39.5	88	80	87	
New Orleans to Hogansville, via Atlanta	139	121	107	90	73	57	39	46	33	28.5	65	75	58	
Difference, favor Atlanta	36	37	30	20	16	13	18	16	15.5	11	23	5	29	
New Orleans to Newnan, via Montgomery	182	165	144	115	94	72	59	64	45.5	40	93	85	83	
New Orleans to Newnan, via Atlanta	133	114	101	86	70	55	37	44	32	27.5	62	71	56.5	
Difference, favor Atlanta	49	51	43	29	24	17	22	20	13.5	12.5	31	14	27.5	
New Orleans to Palmetto, via Montgomery	185	168	146	117	95	73	60	65	50	41.5	90	87	90	
New Orleans to Palmetto, via Atlanta	127	110	97	82	66	54	36	43	31.5	26.5	58	67	55	
Difference, favor Atlanta	58	58	49	35	29	19	24	22	18.5	15	32	20	35	
New Orleans to Fairburn, via Montgomery	189	171	148	119	96	75	60	67	50.5	42	89	89	91	
New Orleans to Fairburn, via Atlanta	125	108	95	79	65	53	35	42	31	26	57	63	54	
Difference, favor Atlanta	64	63	53	40	31	22	25	25	19.5	16	32	25	37	

66 Merchants at LaGrange, Hogansville, Newnan, Palmetto and Fairburn respectively, have choice between rates from New Orleans via Montgomery, and rates from New Orleans via Atlanta, but as the rates via Atlanta are the lowest, respondents have adopted those rates as being most to the advantage of said merchants.

XVIII.

The reason why the rates from New Orleans via Atlanta to LaGrange are higher than the rates to Hogansville, Newnan, Palmetto or Fairburn, is that LaGrange, while nearer to New Orleans, is farther from Atlanta, than any other of said local stations.

If the rates from New Orleans to said local stations were made via Montgomery, instead of via Atlanta, while the rates to LaGrange would be lower than the rates to any other of said local stations, yet the rates from New Orleans to LaGrange would be higher than the rates which respondents now charge.

The distance from Atlanta to Fairburn is 18 miles;

The distance from Atlanta to Palmetto is 25 miles;

The distance from Atlanta to Newnan is 39 miles;

The distance from Atlanta to Hogansville is 58 miles.

The distance from Atlanta to LaGrange is 71 miles;

The rates from Atlanta to those stations, respectively, are not in excess of those fixed by the Georgia Railroad Commission, and are just and reasonably low. The rates from New Orleans to Atlanta are fixed by competition between markets and competition between carriers, as explained above, and are just and reasonably low. In fact, they are materially lower than might be reasonably charged, and materially lower than would be charged were it not for said competition.

The rates charged by respondents are the sum of said competitive rates from New Orleans to Atlanta and reasonably low local rates from Atlanta to those stations, respectively; and therefore respondents' rates are themselves just and reasonably low.

The reason why Fairburn, Palmetto, Newnan and Hogansville have lower rates than LaGrange from New Orleans, is due alone to the fact that they are nearer than LaGrange to Atlanta;

67 and not to any favoritism or discrimination on the part of respondents.

XIX.

The principal competitors of respondents between New Orleans and Atlanta, are:

First. The Illinois Central Railroad from New Orleans to Winona; and the Southern Railway from Winona to Atlanta; a total distance of 646 miles.

Second. The New Orleans & Northeastern Railroad, from New Orleans to Meridian; the Alabama Great Southern Railroad from Meridian to Birmingham; and the Southern Railway from Birmingham to Atlanta; a total distance of 526 miles.

The distance from New Orleans to Atlanta by respondents' roads is 495 miles; or only 31 miles less than by the second route above described.

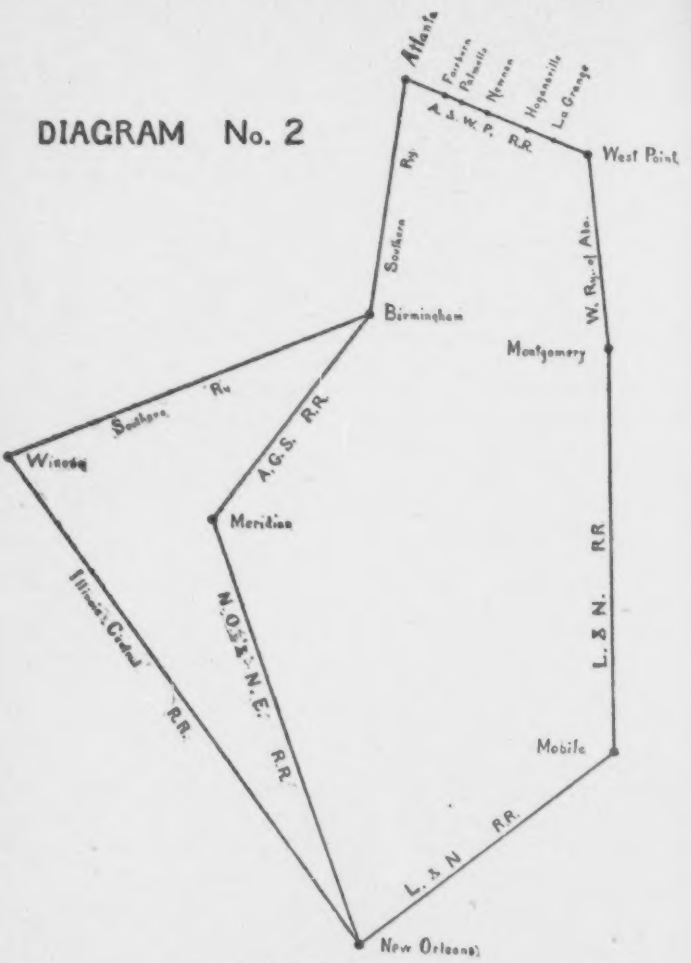
Said first and second routes are both in active, effective and constant competition with respondents; and they participate in the carriage of all classes of freight from New Orleans to Atlanta, at the same rates as are charged by respondents between those points.

If respondents should attempt to increase the rates from New Orleans to Atlanta, they would simply lose the traffic, because it would all go by the other two routes.

The rates from New Orleans to Atlanta would remain precisely as they are now; and by adding the Georgia Railroad Commission rates from Atlanta to Fairburn, Palmetto, Newnan, Hogansville and LaGrange, respectively, the rates from New Orleans to those stations would also remain precisely as they are now.

LaGrange would not be benefited in the least. And the only result would be to deprive respondents of all participation in traffic from New Orleans destined to Atlanta; and to deprive New Orleans and Atlanta of the competition now afforded by respondents' route.

Respondents submit the following diagram (No. 2) which sufficiently illustrates the principal competing routes between New Orleans and Atlanta:



If respondents and their rivals, operating between New Orleans and Atlanta should agree to increase the rates between those points, the traffic would simply be diverted from New Orleans to the rival supply markets referred to above. Merchants at Fairburn, Palmetto, Newnan, Hogansville and LaGrange would purchase their supplies in said rival markets, ship them to Atlanta, and thence to destination. Merchants at Fairburn, Palmetto, Newnan and Hogansville would have the same

advantage in rates as they now possess over LaGrange; and the only result would be to destroy the commerce which
69 now exists between New Orleans and Atlanta, and between New Orleans and Fairburn, Palmetto, Newnan, Hogansville and LaGrange; and to deprive the carriers operating between those cities and stations of such revenue as they have hereto derived from that traffic.

XX.

The proportions, which respondents respectively receive out of the through rates from New Orleans to Atlanta, while low, amount to something more than the additional cost of the movement of that traffic, but if respondents were compelled to carry all of their freight at rates as low as said proportions, it would subject each of them to a loss of freight revenue, which would far exceed $10,000 per annum.

Rather than submit to such losses, respondents would be compelled to decline to participate in any through business from New Orleans to Atlanta.

XXI.

Respondents aver that the rates charged by them from New Orleans to LaGrange are just and reasonably low.

They are much lower than rates previously charged for transportation the same distance by other means of land transportation before railroads were built; and they are much lower than would be now charged for transportation the same distance by any other means of land transportation.

They are not in excess of the rates charged by respondents' competitors for transportation from New Orleans to LaGrange.

They are not in excess of the rates usually charged by railroads in the same section of country for transportation the same distance between other points similarly circumstanced and conditioned.

Said rates taken in connection with the other rates and revenues received by respondents respectively have not yielded to either of respondents more than a fair return upon the present actual fair value of their respective railroads.

70 Under said rates, traffic has moved from New Orleans to LaGrange freely and with profit to the merchants of those cities.

Having fully answered, respondents pray to be hence dismissed with their reasonable costs. ED. BAXTER,

Solicitor for Respondents.

State of Kentucky,
County of Jefferson. Set.

Stuart R. Knott, being duly sworn, says that he is the first

vice-president of the Louisville & Nashville Railroad Company, one of the respondents in the foregoing answer; that he has the general superintendance of the traffic of said company; that he has read said answer; that the facts therein stated are true to the best of his knowledge, information, remembrance and belief; that the seal of said company affixed to said answer is the genuine corporate seal of said company; and that it was affixed thereto by its authority. S. R. KNOTT,

(Corporate Seal of Louisville & Nashville Railroad Co.)

Attest: J. H. ECCLES, Sect.

Sworn to and subscribed before me 22nd day of October, 1898. In witness whereof, I have hereunto subscribed my name and affixed my notarial seal of office. My commission expires Jan. 8th, 1902. G. W. B. OLMSTEAD,

[Notarial Seal] Notary Public.

State of Georgia,
County of Fulton. Sct.

Geo. C. Smith, being duly sworn says that he is the president of the Western Railway of Alabama, one of the respondents in the foregoing answer; that he has read said answer; that the facts therein stated are true to the best of his knowledge, information, remembrance and belief; that the seal of said company affixed to said answer is the genuine corporate seal of said company; and that it was affixed thereto by its authority. GEO. C. SMITH.

71

Sworn to and subscribed before me 25th day of October, 1898. In witness whereof I have hereunto subscribed my name and affixed my notarial seal of office.

[Notarial Seal] T. A. CONKLIN, Jr., Notary Public.

State of Georgia,
County of Fulton. Sct.

Geo. C. Smith, being duly sworn, says that he is the president of the Atlanta & West Point Railroad Company, one of the respondents in the foregoing answer; that he has read said answer; that the facts therein stated are true to the best of his knowledge, information, remembrance and belief; that the seal of said company affixed to said answer is the genuine corporate seal of said company; and that it was affixed thereto by its authority. GEO. C. SMITH.

Sworn to and subscribed before me 25th day of October, 1898. In witness whereof I have hereunto subscribed my name and affixed my notarial seal of office.

[Notarial Seal] T. A. CONKLIN, Jr., Notary Public.

(Indorsed:) Number 207, in Equity. United States Circuit Court, Southern District of Alabama. Interstate Commerce Commission versus Louisville & Nashville Railroad Company, et al. Answer of Defendants. Filed November the 1st, A. D. 1898. Richard Jones, Clerk.

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72 REPLICATION OF COMPLAINANT TO THE ANSWER OF DEFENDANTS.

In the United States Circuit Court for the Southern District of Alabama.

The Interstate Commerce Commission.
vs. In Equity No. 207.
The Louisville & Nashville R. R. Co., et al.

Replication of complainant to the joint and several answer of the Louisville & Nashville Railroad Company, the Western Railway Company of Alabama, and the Atlanta & West Point Railroad Company.

This replicant, saving and reserving all benefit and advantage of exception to the said answer, because of the manifold insufficiencies thereof, for replication thereto says, that it will aver and prove its said bill to be true and sufficient, and that said answer is untrue and insufficient. It therefore prays relief as in the said bill set forth and prayed.

L. A. SHAVER,
Solicitor for Complainant.
M. D. WICKERSHAM,
U. S. Atty. So. Dist. Ala., for Complainant.

Received and filed November 16, A. D. 1898.
RICH'D. JONES, Clerk.

73 TESTIMONY WITH THE EXHIBITS THERETO, TAKEN BEFORE INTERSTATE COMMERCE COMMISSIONER J. C. CLEMENTS, AT ATLANTA, GEORGIA, AND FILED IN THIS CAUSE BY THE DEFENDANTS, L. & N. R. R. CO., ET AL.

Interstate Commerce Commission,
Washington, D. C.

I, Edward T. Moseley, secretary of the Interstate Commerce Commission, do hereby certify that the papers hereto attached are full, true and correct transcript of the stenographers report of the testimony and exhibits taken before Interstate Commerce Commissioner J. C. Clements at Atlanta, Georgia, November 9th, 1896, in the case of Fuller E. Calloway versus the Louisville & Nashville Railroad Company, et al.

In testimony whereof, I have hereunto subscribed my name, and affixed the seal of the Commission, this fourth day of November, 1898.

[Seal] EDWARD A. MOSELEY, Secretary.

Fuller E. Calloway
vs.
Louisville & Nashville Railroad Company, Western Railway of Alabama, and the Atlanta & West Point Railroad Company.

Testimony taken before Interstate Commerce Commissioner J. C. Clements, at Atlanta, Georgia, November 9th, 1896.

Appearances: The Complainant in person; Ed. Baxter, Esqr., for the L. & N. R. R. Co., et al.

Frank Lyon, Stenographer.

74 Com'r. Clements: The first case in which we propose to take testimony is that of Fuller E. Calloway against the Louisville & Nashville Railroad Company, the Western Railway of Alabama and the Atlanta & West Point Railway Company.

Mr. Calloway is present, I believe.

Mr. Calloway: Yes, sir; I have no lawyer.

Mr. Baxter: I represent the defendants.

Com'r. Clements: Mr. Calloway, are you ready to proceed?

Mr. Calloway: Yes, sir.

Com'r. Clements: If you desire to make any statement, you had probably better be sworn.

FULLER E. CALLOWAY, having been duly sworn, testified as follows:

Mr. Calloway: I am in the mercantile business at LaGrange, a station between here and Montgomery, and the rates that I complain of are admitted by the railroad. They will haul stuff from New Orleans through LaGrange to Hogansville, Newnan, Palmetto and Fairburn to Atlanta for less rates than to LaGrange. Hogansville and those other stations are minor stations and this line is the shortest line between New Orleans and Atlanta. They have no other line to compete against to get into Atlanta; it is the shortest line; and that of course discriminates against us because Atlanta gets right down in our territory. They can ship as cheap to Atlanta and back as cheap as we can. Atlanta can come to Hogansville cheaper than we can. They can go right by our door to Atlanta and come back as cheap as we can and at the other places can get in cheaper than we can. That discriminates against us and it injures us by giving our competitors an advantage over us. The complaint is set forth in the petition.

Com'r. Clements: What is your business?

Mr. Calloway: I am in the general mercantile business.

Com'r. Clements: Wholesale or retail?

Mr. Calloway: Retail and wholesale.

Com'r. Clements: And the wholesaling you do, is in what direction?

Mr. Calloway: It is all around the place. In fact, it is cut off to a certain extent by this discrimination. I can only reach right close around the place and then the other
75 towns at a distance can come in at the same rate and try to cut us out; and at the next station they can beat us in there on account of this discrimination. They can haul from New Orleans to Atlanta and right back to Hogansville cheaper than I can get it to LaGrange, much less to reship it to Hogansville.

Com'r. Clements: What was that last statement you made about the comparative cost of getting to Hogansville?

Mr. Calloway: They can haul stuff from New Orleans to Atlanta and ship back to Hogansville cheaper than I can get it to LaGrange, much less my shipping it to Hogansville, cheaper than I can get it to LaGrange.

Com'r. Clements: What is the distance from Atlanta to Hogansville?

Mr. Calloway: Atlanta to Hogansville is 59 miles.

Com'r. Clements: And LaGrange?

Mr. Calloway: To LaGrange is 13 miles.

Com'r. Clements: Give us some facts in regard to the extent of the business in LaGrange—not only as to your own business?

Mr. Calloway: The total business done there?

Com'r. Clements: Yes, sir; the number of houses and the character of them?

Mr. Calloway: There are thirty or forty good business houses, and I suppose, now, even with this discrimination, they do two or three million dollars worth of business a year.

Com'r. Clements: Are there other wholesale houses there besides yours?

Mr. Calloway: No, sir.

Com'r. Clements: In any line?

Mr. Calloway: Not strictly wholesale. They would be there if we could get the rate but we cannot compete up there strictly wholesale. Our competitors can haul stuff from the supply market to Atlanta and rehaul it to LaGrange just as cheap as we can get it to LaGrange and to Hogansville they can get it cheaper. I want to put up a strictly wholesale house there now but these rates will not allow me to do it. I have been negotiating with Mr. Smith to get a warehouse on the track, but I can not do it as long as they can ship from New Orleans to Atlanta and back to Hogansville cheaper
76 than I can to LaGrange.

Com'r. Clements: That does not interfere beyond LaGrange?

Mr. Calloway: Yes, sir; all the way to Hogansville and Newnan and Fairburn and Palmetto.

Com'r. Clements: But I mean in the other direction?

Mr. Calloway: Yes, sir; West Point gets a lower rate than we do from New York or New Orleans. It gets lower rates than LaGrange does from New York or New Orleans and Boston or Cincinnati or anywhere else. Hogansville is on one side and West Point on the other. We also have another line—the Macon & Birmingham. That does not seem to be a competitive line; it runs from Macon to LaGrange. We have a lower rate from Macon than Hogansville and West Point but from every point, Hogansville and West Point get a lower rate than we do. That Macon & Birmingham road has never been acknowledged to be a competitive line.

Com'r. Clements: What is the population of LaGrange?

Mr. Calloway: It is about four or five thousand.

Com'r. Clements: All kinds of articles that you usually get in stores are sold there to farmers and people around?

Mr. Calloway: Yes, sir; and all classes of goods are sold there in almost any quantities, in reasonable quantities for a town of its size.

Com'r. Clements: Does this alleged discrimination of which you complain have any effect on the retail business of LaGrange merchants?

Mr. Calloway: Yes, sir; and on heavy goods, the margins are very short, and just a little difference in the freight would make the margin on heavy goods; they are sold on very short margins.

Com'r. Clements: Do other merchants as competitors with the LaGrange merchants in nearby territory interfere in respect to retail business?

Mr. Calloway: Yes, sir; West Point and Hogansville do; they are two stations on either side of us.

Com'r. Clements: Is there any other material matter you think of that you would like to state, in order to give the other side a full understanding of your complaint?

77 Mr. Calloway: I think of nothing else. The complaint is set out in the petition. I am no lawyer—just a plain country merchant. I have just stated the rates as they publish them; and the other merchants in Hogansville and West Point have the advantage of us in a retail way and the Atlanta merchants in a wholesale way. The distance is longer and the rate is against us. We have the shorter distance.

Cross Examination.

Mr. Baxter: What kind of goods do you buy in New Orleans?

Mr. Calloway: Sugar, molasses and rice.

Mr. Baxter: Do you know about what is the tonnage of goods that you buy in New Orleans?

Mr. Calloway: No, I do not know. It is not so very great on account of the rates being so high. We would like to buy more.

Mr. Baxter: You cannot give us an estimate of how much you do buy?

Mr. Calloway: No, sir; it is not very much, though. We cannot get in there; that is what is the matter; we want to buy more in New Orleans.

Mr. Baxter: Well, as a wholesale dealer, I understand you to say that you can not sell either east or west on the road?

Mr. Calloway: Yes, sir.

Mr. Baxter: Owing to the rates?

Mr. Calloway: Yes, sir.

Mr. Baxter: Then I suppose you sell off the road?

Mr. Calloway: Yes, sir.

Mr. Baxter: How far from LaGrange does the trade go out?

Mr. Calloway: As far as thirty or forty miles in some directions.

Mr. Baxter: The goods you sell to those places are hauled by wagons?

Mr. Calloway: Yes, sir; they are hauled out by wagons. We ship some goods by the road. I sell some classes of goods—maybe the man is nearer Hogansville than he is to LaGrange and I ship to Hogansville for him. I sell by rail and by wagon.

Mr. Baxter: Would there be any difficulty in your using these rates to Hogansville and these other points which you think have a preference over you, and then supply your customers from there?

78 Mr. Calloway: I could not afford to have a storage warehouse at each place.

Mr. Baxter: Could you not use the depot?

Mr. Calloway: No, sir; they charge demurrage after 48 hours. Then my customers want quick delivery which I could not make that way.

Mr. Baxter: Your complaint, then is that you could not work—distribute from these points, without paying demurrage?

Mr. Calloway: Yes, sir; I would have to pay demurrage on it. Sometimes it takes a week to get stuff from New Orleans to LaGrange and these other points and my customer wants it to-morrow, and could not wait a week for it.

Mr. Baxter: They do not buy in carload quantities?

Mr. Calloway: No, sir; not from me.

Mr. Baxter: You spoke about some other railroad at LaGrange?

Mr. Calloway: We have the Macon & Birmingham Railway. They run from Sofkee to LaGrange but they operate to Macon from LaGrange. They lease seven miles.

Mr. Baxter: Well, you have that railroad and the Atlanta & West Point Railroad at LaGrange?

Mr. Calloway: Yes, sir; those are the only railroads at LaGrange.

Mr. Barter: Have you a navigable river there?

Mr. Calloway: No, sir.

Mr. Baxter: What is the distance from Atlanta to West Point via the Atlanta & West Point Railroad?

Mr. Calloway: 87 miles; I think.

Mr. Baxter: What is the distance from Atlanta to LaGrange

via the Southern Railway and the Macon & Birmingham Railway?

Mr. Calloway: It is 140 and odd miles, I think from Atlanta, but the Southern Railway refuses to receive shipment for LaGrange. They used to receive shipments when they worked with the Atlanta & Florida, but when the Southern bought the Atlanta & Florida they refused to receive shipments for LaGrange—they received it at the competitive rates—charged us the full locals. I suppose some arrangement was made between Mr. Lewis and the Southern Railway. I ordered some stuff from New York but when it got to Atlanta, the Atlanta &
79 Florida refused to receive the shipments unless they received their full local and I was forced to turn it over to the West Point. The Southern Road will not talk to me about whether they should compete with the West Point road at LaGrange.

Mr. Baxter: Does the Southern Railway now own the Macon & Birmingham?

Mr. Calloway: I don't know sir: I know that the Southern Railway at Atlanta will not compete with the road at LaGrange except at the local rates.

Mr. Baxter: Does the Southern Railway cross the Macon & Birmingham between Macon and LaGrange?

Mr. Calloway: Yes, sir; at McDonough and also at Woodbury. The latter is really a shorter route, I believe. I really do not know but what it is a little nearer.

Mr. Baxter: Does the Macon & Birmingham Railway have any connections by which it can reach New Orleans?

Mr. Calloway: Well, the Macon & Birmingham has always been cut off. They have no connection with anything. We used to get stuff by the NewOrleans & Northeastern to Atlanta and then by the Atlanta & Florida. Now we do not get anything from anywhere except Macon, Ga. We used to get stuff by the Clyde Line but they made some arrangement to knock us out there. We are barred out.

Mr. Baxter: How long have you been in business at LaGrange?

Mr. Calloway: Nine years for myself; been in business there ever since I was eight years old.

Mr. Baxter: What did you say the population was?

Mr. Calloway: Between four and five thousand. It was 3100 in 1890. Since then we have built a large cotton mill; built an eighteen thousand spindle cotton mill. We have grown there during the depression and I should say there were between four and five thousand people there now.

Mr. Baxter: Do you know what the population of Atlanta is?

Mr. Calloway: Sixty-four thousand in 1890.

Mr. Baxter: Do you know what it is now?

Mr. Calloway: It is estimated at one hundred
80 thousand.

Mr. Baxter: Have you ever heard how traffic shipped from New Orleans to LaGrange reached LaGrange before there were any railroads built there? I suppose LaGrange was a town before any railroads were built there? Do you know how they got the traffic?

Mr. Calloway: That was before my time. I do not think they traded at New Orleans. I hear the old people say they got their stuff from Charleston.

Mr. Baxter: Was it not brought to Columbus and then by wagon across?

Mr. Calloway: No, sir; from Charleston; that was the main market for LaGrange before any railroads were built. That is what I hear. I know nothing about it except from hearsay.

Mr. Baxter: That is all.

Com'r. Clements: Mr. Calloway, have you any further witnesses?

Mr. Calloway: No, sir; I have no others.

Com'r. Clements: Mr. Baxter, you may then call your witnesses.

Mr. Calloway: They admit the figures in their answer.

Com'r. Clements: There does not seem to be any dispute as to the rates in effect.

Mr. Baxter: I think not. There are some slight discrepancies, but nothing material.

Com'r. Clements: The distances are also set forth in the answer and complaint. I suppose they may be accepted as found in the complaint and answer except so far as it may be necessary to correct some of them.

Mr. Baxter: There may be some corrections, but I do not think of anything material.

I will have Mr. L. Haskell sworn.

L. HASKELL, a witness on behalf of the respondents, having been duly sworn, testified as follows:

Mr. Baxter: What is your name?

Mr. Haskell: L. Haskell.

Mr. Baxter: What is your occupation?

Mr. Haskell: Railroad clerk.

81 Mr. Baxter: With what are you connected?

Mr. Haskell: With the Southern States Freight Association.

Mr. Baxter: I hand you herewith paper headed "The Southern States Freight Association. Classified Statement of tonnage from and via New Orleans, La., via lines named to Atlanta, Ga., during the year ended March 31st, 1896." I will ask you, Mr. Haskell, whether you compiled that statement and whether it is correct or not?

Mr. Haskell: I did sir.

Mr. Baxter: Is it a correct compilation?

Mr. Haskell: It is.

Mr. Baxter: I wish you would file it with your deposition.

Mr. Haskell: Yes sir. (The same is marked exhibit No. 1.)

Mr. Baxter: That statement gives the initials of certain railroads. I wish you would give the full names.

Mr. Haskell: The Louisville & Nashville Railroad Company, the Illinois Central Railroad Company; and the New Orleans & Northeastern Railroad.

Mr. Baxter: Explain to the commission how those records of movement of tonnage from New Orleans to Atlanta is kept and how you are enabled to know how much is carried by each of those lines?

Mr. Haskell: The different roads out of New Orleans furnish us their billing for this movement and a record is kept and a classified report is made each month.

Mr. Baxter: That, then, shows not only a statement of the tonnage from and via New Orleans to Atlanta during the year ending March 31st, 1896, but also shows the different railroads over which that tonnage was brought from New Orleans to Atlanta?

Mr. Haskell: Yes, sir.

Mr. Baxter: Are those railroads under any common control or management, Mr. Haskell, that you know of?

Mr. Haskell: None that I know of.

Mr. Baxter: They are independent lines?

Mr. Haskell: Yes, sir.

Mr. Baxter: Are they competing lines?

Mr. Haskell: I think they are.

82 Mr. Baxter: And that represents the amount of traffic that each of those competing lines have been able to secure between New Orleans and Atlanta?

Mr. Haskell: Yes, sir.

Mr. Baxter: I hand you a statement headed "The Southern States Freight Association. Classified Statement of tonnage from points on and beyond the Ohio and Mississippi Rivers and from and via Lexington, Ky., and from Nashville, Tenn., Johnsonville, Tenn., and Florence, Sheffield and Riverton, Ala., to

Atlanta, Ga., during the same period." Who made up that statement, Mr. Haskell?

Mr. Haskell. I did, sir.

Mr. Baxter: Has it been correctly compiled from the records of that association?

Mr. Haskell: Yes, sir.

Mr. Baxter: I wish you would file it as part of your deposition.

Mr. Haskell: Yes, sir. (The same is marked exhibit No. 2.)

Mr. Baxter: And it shows the total amount of tonnage, as I understand, during the year ended March 31st, 1893, during the year ended March 31st, 1894, during the year ended March 31st, 1895, and during the year ended March 31st, 1896. Is that so?

Mr. Haskell: Yes, sir.

Mr. Baxter: And it shows the total tonnage?

Mr. Haskell: Yes, sir.

Mr. Baxter: I notice that the total tonnage from these points to Atlanta is put down as 969,486,200. Is that pounds or tons?

Mr. Haskell: That is pounds.

Mr. Baxter: Now, I hand you another statement headed "Southern States Freight Association Statement of tonnage from the eastern seaboard and interior points in New England, New York, Pennsylvania, Maryland, Delaware and West Virginia, to Atlanta, Ga., during the year ended March 31st, 1893, the year ended March 31st, 1894, the year ended March 31st, 1895, and the year ended March 31st, 1896." Please state whether you compiled that statement and whether it is correct?

Mr. Haskell: Yes, sir; it is correct.

Mr. Baxter: Please file it as part of your deposition.

Mr. Haskell: Yes, sir. (The same is marked ex-
83 hibit No. 3.)

Mr. Baxter: If I understand those three statements, they show the total tonnage to Atlanta from and via New Orleans, the tonnage to Atlanta from points on beyond the Ohio and Mississippi rivers and from and via Lexington, Ky., Nashville and Johnsonville, Tenn., and Florence, Sheffield and Riverton, Ala., to Atlanta, and the tonnage from the eastern seaboard and interior points in New England, New York, Pennsylvania, Maryland, Delaware and West Virginia to Atlanta, during the periods named?

Mr. Haskell: Yes, sir.

Mr. Baxter: Would that include practically all the tonnage into Atlanta from all points?

Mr. Haskell: Yes, sir.

Mr. Baxter: That would be shown by your association records?

Mr. Haskell: Yes, sir.

Mr. Baxter: That is all.

Cross Examination.

Com'r. Clements: I want to get a little clearer understanding of these totals. The first one showing freight from and by way of New Orleans to Atlanta. You have three roads named here. The Louisville & Nashville, the Illinois Central and the New Orleans and Northeastern. Those are the initial roads from New Orleans.

Mr. Haskell: Yes, sir.

Com'r. Clements: Neither one reaches Atlanta on its own rails, I believe, unless it be the Louisville & Nashville?

Mr. Haskell: Yes, sir.

Com'r. Clements: Does it or not?

Mr. Haskell: I am not able to answer that question, sir.

Com'r. Clements: You do not know whether the Louisville & Nashville goes to Atlanta?

Mr. Haskell: I do not know whether they own the Atlanta & West Point and the Western.

Com'r. Clements: Did you not say that none of these roads were under a common control or management?

Mr. Haskell: I do not know that they are.

Com'r. Clements: You do not mean to say they are not; you simply meant to say you did not know?

84 Mr. Haskell: Yes, sir.

Com'r. Clements: The traffic comes by these three initial lines from New Orleans—reaches Atlanta by way of the three lines mentioned here?

Mr. Haskell: Yes, sir.

Com'r. Clements: Name what roads compose the lines—

Mr. Haskell: It starts out by the Louisville & Nashville.

Com'r. Clements: So as to reach Atlanta?

Mr. Haskell: The Louisville & Nashville, the Atlanta & West Point and the Western.

Com'r. Clements: The L. & N. to what point?

Mr. Haskell: To Montgomery.

Com'r. Clements: And Montgomery to West Point?

Mr. Haskell: The Western of Alabama and then to Atlanta, the Atlanta & West Point.

Com'r. Clements: The Illinois Central—what would be the connection by that to Atlanta?

Mr. Haskell: Might go by way of Winona and around that way.

Com'r. Clements: And then over what road?

Mr. Haskell: Over the Southern.

Com'r. Clements: The Southern into Atlanta?

Mr. Haskell: Yes, sir.

Com'r. Clements: And the New Orleans & Northeastern?

Mr. Haskell: By way of Meridian and the Southern, or by way of Chattanooga and around by the W. & A.

Com'r. Clements: Does your association keep all the time a classified record of all freight from every direction carried by the separate lines?

Mr. Haskell: It does from the West.

Com'r. Clements: This third statement does not show the classifications?

Mr. Haskell: No, sir.

Com'r. Clements: From eastern points?

Mr. Haskell: No, sir.

Com'r. Clements: Does the freight shown in this first table exhibit No. 1, from and by way of New Orleans, come to Atlanta on through bills of lading?

85 Mr. Haskell: I could not answer that; I do not know.

Com'r. Clements: You do not know whether it comes through on through bills of lading or whether it is transferred at two or three points? No record to show that?

Mr. Haskell: I do not know.

Com'r. Clements: In resepct to the freight that reaches Atlanta from the Ohio River points mentioned in exhibit No. 2 and other western points of origin, do you know whether that comes to Atlanta on through bills of lading?

Mr. Haskell: The supposition is that it comes that way; but I do not know whether it does or not.

Com'r. Clements: Mr. Calloway, do you want to ask any questions?

Mr. Calloway: No, sir.

Mr. Baxter: As I understand you, traffic moving from New Orleans to Atlanta may leave New Orleans via the Illinois Central Railroad which connects with the Southern Railway at Winona and thence over the Southern Railway to Atlanta?

Mr. Haskell: That is one route; yes, sir.

Mr. Baxter: Now, traffic leaving New Orleans via the New Orleans & Northeastern Railroad would be transferred to the Alabama Great Southern Railroad at Meridian, would it not?

Mr. Haskell: Yes, sir; that is the way it would come.

Mr. Baxter: And from there to Birmingham over that road and from Birmingham to Atlanta over the Southern Railway?

Mr. Haskell: Yes, sir.

Mr. Baxter: Are there any routes between New Orleans and Atlanta except those routes?

Mr. Haskell: It might go up by way of Chattanooga and then via W. & A. or to Selma and then over the Western.

Mr. Baxter: But would leave New Orleans by one of those three routes?

Mr. Haskell: Yes, sir.

Mr. Baxter: That is all. Mr. Hunter, please take
86 the stand.

THOMAS J. HUNTER, a witness on behalf of the respondents, having been duly sworn, testified as follows:

Mr. Baxter: State your name, age, residence and occupation.

Mr. Hunter: Thomas J. Hunter, 35 years old, auditor of the Atlanta & West Point and the Western Railway of Alabama, and reside in Atlanta.

Mr. Baxter: What connection have you, as auditor, with the accounts of the earnings from freight carried over those roads—the Atlanta & West Point and the Western Railway of Alabama?

Mr. Hunter: I compile the earnings, both freight and passenger.

Mr. Baxter: An account of these earnings is kept in your office?

Mr. Hunter: Yes, sir.

Mr. Baxter: Are those two roads operated separately or in conjunction?

Mr. Hunter: In conjunction.

Mr. Baxter: They have, then, a continuous through line?

Mr. Hunter: Yes, sir.

Mr. Baxter: From what point to what point?

Mr. Hunter: From Selma and to Atlanta—through line from Montgomery to Atlanta.

Mr. Baxter: That line is under the same control?

Mr. Hunter: The same control.

Mr. Baxter: What are the competitive stations on that through line between Selma and Atlanta?

Mr. Hunter: Selma, Montgomery, Opelika and Atlanta.

Mr. Baxter: Are the rates on interstate freight to and from those competitive points generally lower or higher than the rates on such traffic to and from local points on that line?

Mr. Hunter: They are lower.

Mr. Baxter: Suppose the rates on that through line you speak of—the rates on interstate freight to and from LaGrange —were so adjusted as not to exceed the rates to and from either

of said competitive points through which the traffic passes—what would be the result upon the revenue of the through line?

Mr. Hunter: We would lose $5,723.28 per annum?

Mr. Baxter: What per cent. is that?

87 Mr. Hunter: That would be 37 per cent of the local interstate freight earnings at LaGrange.

Mr. Baxter: That, then, would be the loss if that adjustment of rates were made?

Mr. Hunter: Yes, sir.

Mr. Baxter: Now, suppose you were to make an adjustment of rates on interstate freight to and from all local stations on that line so as not to exceed the rates to and from the competitive points through which the traffic passes, what result would that have?

Mr. Hunter: That would result in a decrease of the gross freight earnings of the through line of $63,331.56.

Mr. Baxter: What per cent would that be?

Mr. Hunter: 41.6 of the total interstate freight earnings to and from local stations.

Mr. Baxter: You mean 41.6 per cent?

Mr. Hunter: Yes, sir.

Mr. Baxter: Suppose an adjustment of rates on freight to and from each of those competitive points that you mentioned awhile ago was made upon the basis of the rates to and from local stations on said through line. What would be the result in that event?

Mr. Hunter: That would result in a decrease of the gross freight revenue by reason of loss of competitive business of $133,596.24 per annum.

Mr. Baxter: What per cent is that?

Mr. Hunter: That is equal to 24.7 per cent of the total freight earnings of the said through lines. That is, for the year ending June 30, 1896.

Mr. Baxter: You assume, I suppose, that if the rates to and from those competitive points were raised to be as high as to and from local stations, you would lose the competitive business?

Mr. Hunter: Yes, sir; lose it altogether.

Mr. Baxter: That would represent the loss to the line?

Mr. Hunter: Yes, sir.

Mr. Baxter: I will ask you whether there is kept in your office data from which you can ascertain the tonnage by classes and commodities moved from New Orleans to Atlanta,

88 Ga., and to local stations on the Atlanta & West Point Railroad and the Western Railway of Alabama?

Mr. Hunter: Yes, sir.

Mr. Baxter: I will ask you whether you have compiled a

statement of that tonnage for the year ending June 30, 1895?

Mr. Hunter: Yes, sir.

Mr. Baxter: Please see if that is the statement and tell whether it is correct or not? (Handing witness paper.)

Mr. Hunter: Yes, sir; this is the statement. It is taken from the way bills.

Mr. Baxter: Taken directly?

Mr. Hunter: Taken directly from the way bills.

Mr. Baxter: State to the Commission what the tonnage is from New Orleans to Atlanta?

Mr. Hunter: In particular classes?

Mr. Baxter: No; the total.

Mr. Hunter: 6,773 tons.

Mr. Baxter: How much is it to LaGrange?

Mr. Hunter: 100 tons.

Mr. Baxter: How does the tonnage to Atlanta compare to the tonnage of all the local stations you have on that sheet?

Mr. Hunter: It is about 6,700 tons against 1,000 tons—in the neighborhood of a thousand.

Mr. Baxter: It is fully six times as much?

Mr. Hunter: Yes, sir.

Mr. Baxter: To Atlanta as to all the local stations combined?

Mr. Hunter: Yes, sir.

Mr. Baxter: That is all. (The paper referred to was filed and is marked Exhibit No. 4.)

Cross Examination.

Com'r. Clements: The last statement you made, I did not quite understand. What did you say as to the tonnage to and from Atlanta?

Mr. Hunter: To Atlanta.

Com'r. Clements: From where?

Mr. Hunter: From New Orleans.

89 Com'r. Clements: Is about six times as much as what other stations or classes of stations?

Mr. Hunter: To all stations on the top of that statement.

Com'r. Clements: And what are they—are they junction points or local stations?

Mr. Hunter: Local stations.

Com'r. Clements: Between junction points?

Mr. Hunter: Between junction points.

Com'r. Clements: Now, how do you get at the statement you made a moment ago to the effect that you would lose altogether something over a hundred thousand dollars if your [you] should raise your rates to competitive points to be in harmony with your rates to local points?

Mr. Hunter: Assuming that we would lose the whole business.

Com'r. Clements: And that included Atlanta business?

Mr. Hunter: Yes, sir; the four junctions.

Com'r. Clements: What other junctions are there?

Mr. Hunter: Atlanta, Opelika, Montgomery and Selma.

Com'r. Clements: Does the conclusion also that you arrive at in respect to that—is it not also necessarily based upon the assumption that the other competing roads would adhere to the present system and would not reduce their rates or raise them?

Mr. Hunter: Certainly.

Com'r. Clements: Suppose the other lines that carry as you do, should do the same thing, how would it affect your business? That is, suppose they adjusted their rates to junction points in harmony with yours, would not you get the same proportion of the business you do now?

Mr. Hunter: I would not be surprised if we would; but I could not say, sir; I did not figure on that.

Com'r. Clements: And you would all get more freight then than you do now?

Mr. Hunter: I do not know, sir.

Com'r. Clements: Do you not know that about as well as you know what you would lose if you made the change—of course, it is based on an assumption?

90 Mr. Hunter: I figured that if the other roads did not adjust, that we would lose it all.

Com'r. Clements: Would it not follow that if they did the same thing, you would probably retain about the same proportion of the business you do now?

Mr. Hunter: I would suppose we would, but I would not like to say we would.

Com'r. Clements: Of course, you can not say absolutely? How did you get at those other statements you made as to what you would lose at LaGrange at local points, by adjusting your rates so as not to charge higher?

Mr. Hunter: Figured it from the way bills.

Com'r. Clements: On the basis of one year's shipments?

Mr. Hunter: I did on the basis of one year's shipments, but worked the total for the month of January, 1896, which was a very fair month.

Com'r. Clements: Does that estimate stand for a month or a year?

Mr. Hunter: For a year.

Com'r. Clements: On the basis of a month?

Mr. Hunter: Yes, sir; it is for the month of January. That

is the best month because the shipments are fair; it is the fairest month to strike an estimate for the year.

Mr. Calloway: Is not more shipped from New Orleans in January than any other month in the year?

Mr. Hunter: No.

Mr. Calloway: Did you figure through any other month?

Mr. Hunter: No.

Mr. Calloway: You do not know, then, that that is correct?

Mr. Hunter: No. I think that is about the fairest month we could give them. The president and the traffic manager and myself talked it over and we picked out that month.

Com'r. Clements: Do the goods from New Orleans to all points on your line, about which you have testified, go through on through way bills or through bills of lading?

Mr. Hunter: Not on through way bills, on through bills of lading; but it has to be rebilled at junction points.

91 Com'r. Clements: With what line does your road run in connection mostly in respect to these shipments to New Orleans?

Mr. Hunter: The Louisville & Nashville.

Com'r. Clements: And take it from the Louisville & Nashville at what point?

Mr. Hunter: At Montgomery.

Com'r. Clements: Does much of it come in the original cars —in those loaded at New Orleans?

Mr. Hunter: I do not know, sir.

Com'r. Clements: Does your road keep a classified account of freight in all directions?

Mr. Hunter: Nothing except what the Interstate Commerce Commission requires us to do.

Com'r. Clements: I mean the different commodities?

Mr. Hunter: We only keep it as the Interstate Commerce Commission requires it.

Mr. Calloway: You say you would lose five thousand dollars at LaGrange if you gave us the rate?

Mr. Hunter: Yes, sir; five thousand dollars per annum.

Mr. Calloway: What year was that?

Mr. Hunter: Year ending June 30th, 1896. I took one month and estimated on that.

Com'r. Clements: But the calculations for that month were made from actual shipments?

Mr. Hunter: Yes, sir; actual way bills.

Mr. Baxter: I understand you to say that in making up this statement you had to examine the billing for a month?

Mr. Hunter: Yes, sir.

Mr. Baxter: And in order to get it up for a whole year, you

would have had to take all the billings for the entire year?

Mr. Hunter: Yes, sir.

Mr. Baxter: Would that have been a small or a large amount of work?

Mr. Hunter: A considerable amount. I do not keep my impression copies of billings over six months. I would have to go to the terminal points to work it up from there.

92 Mr. Baxter: I understand you to say that you and the president and the general manager of your company intended to select a fair month to illustrate this business?

Mr. Hunter: Yes, sir. I told them that I thought that would be a fair month. It is a good large month and a very fair month; it runs about the average if you take the summer business and the winter business.

Mr. Baxter: Some months are larger and some smaller?

Mr. Hunter: Yes, sir.

Mr. Baxter: And you endeavored to take a fair month?

Mr. Hunter: I think we took the fairest month we could possibly take.

Mr. Calloway: You did not go through any other month except that?

Mr. Hunter: No, sir.

Mr. Calloway: You had two or three men at LaGrange?

Mr. Hunter: I did not know it.

Mr. Calloway: You were getting up the New Orleans business at LaGrange?

Mr. Hunter: I did not know it.

Mr. Baxter: That is all. I will now call Mr. Smith.

GEORGE C. SMITH, called on behalf of the respondents, having been duly sworn, testified as follows:

Mr. Baxter: State your name, age, residence and occupation?

Mr. Smith: George C. Smith; age, 41; residence, Atlanta; occupation, president and general manager of the Atlanta & West Point Railway and Western Railway of Alabama.

Mr. Baxter: State what was the total amount of capital stock of the Atlanta & West Point Railroad Company issued and outstanding for the year ending June 30, 1895?

Mr. Smith: $1,232,200.

Mr. Baxter: State what dividends were declared upon such stock during that year?

Mr. Smith: $73,932, equal to six per cent.

Mr. Baxter: What was the total amount of funded debt of said company issued and outstanding for said year?

93 Mr. Smith: $1,232,200.

Mr. Baxter: Of what did said funded debt consist?

Mr. Smith: Certificate of indebtedness issued January 30th, 1891.

Mr. Baxter: Were they secured by any mortgage upon the property of Company?

Mr. Smith: No, sir.

Mr. Baxter: What rate of interest was paid upon that debt?

Mr. Smith: Six per cent.

Mr. Baxter: What did it amount to?

Mr. Smith: $73,932.

Mr. Baxter: How many miles of road were represented by the said capital stock and funded debt?

Mr. Smith: 85.70.

Mr. Baxter: How much did the capital stock amount to per mile of road?

Mr. Smith: $14,378.06.

Mr. Baxter: How much did the funded debt amount to per mile of road?

Mr. Smith: $14,378.06.

Mr. Baxter: What did the cost of said road amount to on June 30th, 1895—how much was the cost per mile of road?

Mr. Smith: $2,464,400—$28,756.12 per mile.

Mr. Baxter: That two millions together there represents the total cost of the whole road?

Mr. Smith: The road and equipment as carried on the books of the company.

Mr. Baxter: What was the income account of said road for the year ending June 30th, 1895? Please file as Exhibit No. 5 a copy of page 31 of the report of that company to the Interstate Commerce Commission for that year?

Mr. Smith: I have a copy taken from the Interstate Commerce report; shall I read it or file it?

Mr. Baxter: File it. (The same is marked Exhibit No. 5.)

Mr. Baxter: What were the earnings from operation of said road for said year? Please file as Exhibit No. 6 a copy

94 of page 35 of said report.

Mr. Smith: I have page 35, taken from a copy of our report marked Exhibit B. (The paper referred to is marked Exhibit No. 6.)

Mr. Baxter: What were the operating expenses of said road for said year? File as Exhibit No. 7 a copy of pages 43 and 45 of said report.

Mr. Smith: These are marked Exhibit C. (The same is marked Exhibit No. 7.)

Mr. Baxter: What were the number of officers and employes of said road and their compensation for said year? File as Exhibit No. 8 page 59 of said report.

Mr. Smith: I have that here. (The same is marked Exhibit No. 8.)

Mr. Baxter: Give the passenger and freight and train mileage of said road for said year. Please file as Exhibit No. 9 a copy of page 61 of said report. (The same is marked Exhibit No. 9.)

Mr. Baxter: What was the freight traffic movement of said road for said year, excluding companies material? File as Exhibit No. 10 to your testimony copy of page 65 of said report. (The same is marked Exhibit No. 10.)

Mr. Baxter: What was the total amount of capital stock of the Western Railway of Alabama issued and outstanding for the year ending June 30, 1895?

Mr. Smith. Three million dollars.

Mr. Baxter: What dividends were declared upon said stock during that year?

Mr. Smith: Sixty thousand dollars, equal to two per cent.

Mr. Baxter: What was the total amount of funded debt of said company issued and outstanding for said year?

Mr. Smith: $1,543,000.

Mr. Baxter: Of what did that funded debt consist?

Mr. Smith: First mortgage bonds issued October 1st, 1888.

Mr. Baxter: What rate of interest was paid upon said funded debt?

Mr. Smith: Four and one-half per cent.

Mr. Baxter: How many miles of road were represented by the capital stock and funded debt of the Western Railway of Alabama?

95 Mr. Smith: 133.10.

Mr. Baxter: How much did the capital stock amount to per mile of road?

Mr. Smith: $22,539.00.

Mr. Baxter: How much did the funded debt amount to per mile of road?

Mr. Smith: $11,593.

Mr. Baxter: How much did the cost of said road amount to on June 30, 1895, and how much was the cost per mile of road?

Mr. Smith: $4,543,000.00, equal to $34,132.23 per mile.

Mr. Baxter: What was the income account of said road for the year ending June 30th, 1895? Please file as Exhibit No. 11 to your deposition a copy of page 31 of the report above referred to of the company to the commission for the year ending June 30, 1895. (The same is marked Exhibit No. 11.)

Mr. Baxter: What were the earnings from operation of said road for said year. File as Exhibit No. 12 to your testimony, page 35 of said report, (The same is marked Exhibit No. 12.)

Mr. Baxter: What were the operating expenses of said road for said year? File as Exhibit No. 13 to your deposition, copy of pages 43 and 45 of said report. (The same is marked Exhibit No. 13.)

Mr. Baxter: What was paid officers and employes of said road and what were their salaries for said year? File as Exhibit to your deposition, copy of page 59 of that report. (The same is marked Exhibit No. 14.)

Mr. Baxter: Give the passenger and freight and train mileage of said road for said year? File as Exhibit No. 15 to your deposition, copy of page 61 of said report. (The said is marked Exhibit No. 15.)

Mr. Baxter: What was the freight traffic movement of said road for said year, excluding company material? File as Exhibit No. 16 to your deposition, copy of page 65 of said report. (The same is marked Exhibit No. 16.)

Mr. Baxter: Were the Atlanta & West Point and the Western Railway of Alabama operated separately or jointly for the year ending June 30, 1895?

96 Mr. Smith: These roads were operated under general working relations with separate accounts.

Mr. Baxter: And they make separate reports to the Commission?

Mr. Smith: Yes, sir.

Mr. Baxter: But they are operated under one management, as I understand?

Mr. Smith: Under one management—under separate boards of directors.

Mr. Baxter: But they have the same president and general manager?

Mr. Smith: Yes, sir; and the same general officers.

Mr. Baxter: State whether said roads were managed honestly or dishonestly, skilfully or unskilfully, economically or extravagantly for the year ending June 30, 1895?

Mr. Smith: They were operated honestly, skilfully and economically.

Mr. Baxter: State whether any efforts were made to secure traffic for said railroads during that year?

Mr. Smith: Yes, sir.

Mr. Baxter: Did you have out soliciting agents?

Mr. Smith: The companies have a full corps of traffic solicitors, agents and other people that are usually employed by the railroads to solicit traffic.

Mr. Baxter: What would it cost at the present time to duplicate the Atlanta & West Point Railroad and the Western Railway of Alabama, including their terminals?

Mr. Smith: It would cost, in my judgment, from 30 to 35 thousand dollars per mile.

Mr. Baxter: What is the average capitalization per mile of all the railroads of the United States, as shown by the annual report of the Interstate Commerce Commission for the year ending June 30, 1895? Please refer to pages 41 and 42 of that report.

Mr. Smith: $63,206.00.

Mr. Baxter: What is the percentage of expenses to earnings of the Atlanta & West Point Railroad for the year ending June 30th, 1895?

Mr. Smith: 66.13 per cent.

Mr. Baxter: What is the percentage of expenses to earnings for the Western Railway of Alabama for the year ending June 30, 1895?

Mr. Smith: 58.43 per cent.

97 Mr. Baxter: What is the percentage of expense to earnings of all the railroads of the United States, as shown by the report of the Interstate Commerce Commission for the year ending June 30, 1895? Please refer to page 74 of that report.

Mr. Smith: 67.48 per cent.

Mr. Baxter: It has been stated by Mr. Hunter, the auditor of your line, that in a certain event a reduction of revenue would occur of $63,331.56 per annum and that in a certain other event a reduction of said revenue of $133,598.24 would occur per annum. I wish you would state to the Commission what effect that would have upon the ability of the Atlanta & West Point Railroad and the Western Railway of Alabama to pay operating expenses, fixed charges and dividends.

Mr. Smith: Considering the Atlanta & West Point Railway and the Western Railway of Alabama as one line, a reduction of $63,331.56 in the gross earnings not accompanied by a decrease in the expenses, would reduce the average yearly surplus of the past five years applicable to dividends from $159,902.40 to $96,-570.84, leaving a possible dividend of 2.33 per cent per annum. A reduction of $133,598.24 in the gross earnings not accompanied by a decrease in the expenses, would reduce the average yearly surplus of the last five years applicable to dividends from $159,902.40 to $26,304.16, leaving a possible dividend of .62 of one per cent per annum.

Mr. Baxter: Mr. Hunter, the auditor of the road, gave certain testimony here as representing the business of the road for the year and stated that in making up his calculation he took the

business of some one month. Did you have anything to do with that, Mr. Smith?

Mr. Smith: That matter was brought to my attention from the fact that the computation or the re-working of the earnings from the billing of an entire year was a very expensive piece of work and I instructed him to select what would be a fair average month of the year and compute the earnings on the reduced basis for one month. The month of January was selected as being neither a large nor a small month, but a representative month, and estimates were made from that month.

Mr. Baxter: Are you still, now, of the opinion that that was a fair month to select for the purpose of making those calculations or not?

98 Mr. Smith: I think it would be rather under. I think the month is doubtless not a fair representative in that way. I am of the opinion that if the figures were worked for the entire year it would exceed the figures that have been taken.

Mr. Baxter: That is all.

Cross Examination.

Com'r. Clements: In what time of the year is the movement heavier, in your opinion?

Mr. Smith: I think the movement is heavier in November and in April.

Com'r. Clements: And when is it lighter?

Mr. Smith: We are speaking now of the entire interstate movement?

Com'r. Clements: Yes, sir; from New Orleans.

Mr. Smith: The entire interstate business of the road—I would not make an estimate of the month.

Com'r. Clements: This statement has reference to all interstate business?

Mr. Smith: All interstate business.

Com'r. Clements. I have not examined the exhibits you have filed and can not do so now, but I want to ask you some question that we may fully understand their bearing. Mr. Baxter asked you what was the cost of the roads about which you testified separately, on the 30th of June, 1895. Now, what do you include in making up what you call the cost of the Atlanta & West Point road, for instance?

Mr. Smith: The figures that I have given are taken from the general books of the company. They exactly equal the capitalization. The cost of each road is carried in our accounts at the sum of the capitalization—the bonds and stock.

Com'r. Clements: And that means the bonds and stock?

Mr. Smith: Bonds and stock. Those accounts are closed; no entries are made in them.

Com'r Clements: Did I understand you to say there were no bonds? You spoke of certificates of indebtedness?

Mr. Smith: There are no bonds.

Com'r. Clements: Then you include them in the catagory of bonds—the certificates of indebtedness. They draw interest?

99 Mr. Smith: They draw interest.

Com'r. Clements: And they stand in the place of bonds as to the Atlanta & West Point? That is, form a part of the capitalization or cost?

Mr. Smith: Yes, sir.

Com'r. Clements: When was that road built?

Mr. Smith: I am unable to tell you the exact year.

Com'r. Clements: About when, is near enough.

Mr. Smith: It was early in the forties.

Com'r. Clements: Has it ever been reorganized?

Mr. Smith: I think not, sir. I am not familar with the early history of the road.

Com'r. Clements: Never been in the hands of receivers?

Mr. Smith: Never been in the hands of receivers.

Com'r. Clements: Now, do you know enough of the history of this indebtedness to tell us what those bonds were issued for and the certificates in the case of the Atlanta & West Point? The certificates of stock—what was the occasion for issuing them?

Mr. Smith: The stock certificates?

Com'r. Clements: The certificates of indebtedness.

Mr. Smith: I am really unable to testify as to the early financial history of the railroad. I have no personal or acquired knowledge that would be of any benefit to this investigation.

Com'r. Clements: You do not know, then, whether the stock, which amount to about how much a mile?

Mr. Smith: Something over fourteen thousand dollars.

Com'r. Clements: You do not know anything as to whether that represents exactly expenditures or cash that was put in or not, do you?

Mr. Smith: I do not know from my own knowledge of the circumstances, when it was issued; no, sir.

Com'r. Clements: Do you know any of those facts in respect to the other road as to what the bonds actually represent and what the stock actually represents?

Mr. Smith: Nothing except what is disclosed by the report.

Com'r. Clements: What you mean to say, then is that the

books indicate that amount of capitalization of the road
100 by stocks and bonds and certificates of indebtedness?

Mr. Smith: The properties are carried on the books at that valuation.

Com'r. Clements: And you do not know what actual expenditures went in to make up these respective expenses?

Mr. Smith: We do not charge to these accounts the yearly improvements to the property through betterments or renewals. We might buy a hundred thousand dollars worth of equipment; no entry is made to the cost of the road for that. If we spend two hundred thousand dollars for rails, that is not entered. In other words, the cost of the property is not increased. We have probably made several hundred thousand dollars worth of betterments in the last two years, for which no entry is made.

Com'r. Clements: To what account is that charged?

Mr. Smith: That is absorbed in the expenses.

Com'r. Clements: Do you have reference now to replacing rails and repairs or do you also include the building of new switches? Where would that go?

Mr. Smith: In the laying of rails the difference between the cost of material and cost of material placed in the track is charged for expenses and in constructing new track, new stations, new yards or new bridges, the entire cost is charged to expenses.

Com'r. Clements: Are you able to say that has been the method of charging these accounts and carrying them on the books from the beginning or not?

Mr. Smith: So far as my examination of the accounts of the company may cover for the period of five or six years or more, there has been no improvement or betterment account kept, so far as I am aware.

Com'r. Clements: I believe you said it was your opinion that it would cost between thirty and thirty-five thousand dollars a mile to duplicate the Atlanta & West Point Railroad?

Mr. Smith: Yes, sir.

Com'r. Clements: Or did you include both?

Mr. Smith: I spoke of it as a whole.

Com'r. Clements: Will you give us a little analysis of that and tell us how you arrive at that?

101 Mr. Smith: The cost of construction for material for making roadways such as these roads have, building bridges, terminals, rights of way, construction shops; in location and condition in which these properties now are with the accummulation of improvements, side tracks and facilities which have been acquired in the course of their history. My estimate includes a road as favorably located as these roads are in the

cities in which they are and which they reach; my estimate is based on the construction of the road in the location in which these roads are and to duplicate these roads if they were to be built new in their present condition.

Com'r. Clements: Have you any idea—can you tell us how much of that estimate is based upon property owned in cities?

Mr. Smith: My estimate is a general one.

Com'r. Clements: Aside from the track, I mean.

Mr. Smith: It would be difficult to divide the estimate in that way. I consider the location of the road one of the items of its value.

Com'r. Clements: You mean because it is favorably located in the towns? We are speaking now of the cost of duplication.

Mr. Smith: Its favorable location in the towns. These roads were built through before the towns were located or in their very early history. The towns have grown up around the railroads. The railroads have made the towns and to acquire the present location of these roads in the towns as they now exist is an element that enters into my valuation of the road.

Com'r. Clements: You do not venture an opinion as to what percentage of this entire cost of duplication is made up of the property in the cities and towns?

Mr. Smith: I would not undertake to divide the estimate in that way. I consider the properties—that is my judgment only—it is my judgment that it would cost the amount stated to reproduce them if they did not exist now and to reproduce them in their present condition and location.

Com'r. Clements: A large part of the enhancement in the value of these roads, which you say are well located and much more valuable than when built, is due then to the enhancement of the property then acquired by the growth of cities and towns in which they are located?

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Mr. Smith: That is an element of their present value.

Mr. Calloway: Is it not true that the certificates of indebtedness were issued without value or, in other words, what we call watering stocks.

Mr. Smith: I do not know anything of that.

Mr. Calloway: Not personally, but what you have heard?

Mr. Smith: I do not care to testify as to hearsay.

Mr. Calloway: You do not know whether they were given to the stockholders or not?

Mr. Smith: I have no knowledge as to how it was issued.

Mr. Calloway: Have you the same knowledge of that as the other things about which you have testified?

Mr. Smith: No, sir.

Mr. Calloway: You have no knowledge of this?

Mr. Smith: No, sir. I have no knowledge about that. Probably there are others who have.

R. E. LUTZ, a witness on behalf of the respondents, having been duly sworn, testified as follows:

Mr. Baxter: State your name, age, residence and occupation.

Mr. Lutz: R. E. Lutz, freight traffic manager, Montgomery, Ala.

Mr. Baxter: How long have you been engaged in the railroad traffic business and in what capacity?

Mr. Lutz: About twenty years.

Mr. Baxter: In what capacities?

Mr. Lutz: For ten years, probably, in traffic matters, such as agent, traveling agent, soliciting agent, and the last six years in charge of the traffic of the roads which I represent.

Mr. Baxter: What does the revenue derived by the lines of the defendant companies on traffic from New Orleans to LaGrange amount to and what does said traffic from New Orleans to Atlanta amount to?

Mr. Lutz: Traffic from New Orleans to LaGrange for the year ending June 30, 1895, was $262.70; to Atlanta $13,470.19 for the same period.

Mr. Baxter: And the revenue to Atlanta was about six times as much as to LaGrange.

Mr. Lutz: Yes, sir.

103 Mr. Baxter: With the figures as corrected, I understand that the revenue derived from the traffic from New Orleans to Atlanta is about fifty times as much as from New Orleans to LaGrange?

Mr. Lutz: Yes, sir.

Mr. Baxter: Where freight is shipped by the lines of the defendant companies from New Orleans to Atlanta, is it billed through?

Mr. Lutz: Yes, sir.

Mr. Baxter: How is it with reference to freight shipped by those lines from New Orleans to LaGrange?

Mr. Lutz: That is billed locally—billed to Montgomery and rebilled from Montgomery.

Mr. Baxter: But when shipped to Atlanta or LaGrange it goes on through bills of lading, I suppose?

Mr. Lutz: As a rule, yes, sir.

Mr. Baxter: With the exception that the Louisville & Nashville Railroad from New Orleans to Montgomery and the Western Railway of Alabama and the Atlanta & West Point Railroad from Montgomery to Atlanta carry upon through bills of lading

and at agreed through rates, is their any other management or control between the two systems that you know of?

Mr. Lutz: That is all.

Mr. Baxter: Does the freight which is shipped from New Orleans to LaGrange over said lines generally move in carload or less than carload?

Mr. Lutz: Less than carload lots.

Mr. Baxter: How is it with reference to their moving from New Orleans to Atlanta?

Mr. Lutz: That is principally in carload lots.

Mr. Baxter: Has your experience and training with reference to traffic business been such as to enable you to form opinions as to the reasonableness of rates in this section of the country?

Mr. Lutz: Yes, sir; I think so.

Mr. Baxter: What, in your opinion, would be just and reasonable charges for the transportation of classes one, two, three, four, five and six, and A, B, C, D, E, H and F, and special sugar from New Orleans to LaGrange?

Mr. Lutz: First class, $1.43; second, $1.24; third, $1.09; fourth, .93; fifth, .74; sixth, .59; A, 41; B, 41; C, 33.5; D, 29; E, 60; H, 74; F, 59; special sugar, 38.

104 Mr. Baxter: Are those the present rates that are charged from New Orleans to LaGrange?

Mr. Lutz: Yes, sir.

Mr. Baxter: I understand you to say they are just and reasonable in and of themselves?

Mr. Lutz: Yes sir; I think they are just and reasonable.

Mr. Baxter: What are the rates on those classes from New Orleans to Montgomery?

Mr. Lutz: First, 94; second, 88; third, 74; fourth, 59; fifth, 48; sixth, 37; A, 24; B, 27; C, 20; D, 16; E, 44; H, 29; F, 39; special sugar 18.

Mr. Baxter: State the local rates on said classes from Montgomery to West Point.

Mr. Lutz: First, 55; second, 47; third, 42; fourth, 32; fifth, 26; sixth, 21; A, 21; B, 23; C, 21; D, 17; E, 29; H, 32; F, 40; special sugar, 21.

Mr. Baxter: Now state whether the local rates which you have just read from Montgomery to West Point have been approved by the Alabama Railroad Commission?

Mr. Lutz: They have.

Mr. Baxter: If you have it, I wish you would file as an exhibit to your deposition, a copy of the statute of Alabama under which the Railroad Commission acts in that state, permitting those rates.

Com'r. Clements: Are you speaking of the rates from Montgomery to West Point?

Mr. Baxter: Yes, sir. (The same is marked Exhibit No. 17.)

Mr. Baxter: State the local rates on said classes from West Point to LaGrange, Hogansville, Newnan, Palmetto and Fairburn. If you have a statement there you can file it with your deposition, as it will save time.

Mr. Lutz: Yes, sir. (See Ex. 19 (1).)

Mr. Baxter: State whether the last mentioned rates have been approved by the Georgia Railroad Commission.

Mr. Lutz: Yes, sir.

Mr. Baxter: I wish you would file as an exhibit to your deposition a copy of the statute of Georgia in fixing railroad rates.

105 Com'r. Clements: Those are rates to and from what points?

Mr. Baxter: From West Point, LaGrange, Hogansville, Newnan and Fairburn, being the stations in controversy. (The same is marked Exhibit No. 18.)

State the rates on said classes from New Orleans to Atlanta. Have you that in tabulated form?

Mr. Lutz: Yes, sir.

Mr. Baxter: And state the local rates from Atlanta to Fairburn, Hogansville, Newnan and LaGrange on said classes. Is that shown by the same paper?

Mr. Lutz: Yes, sir.

Mr. Baxter: State whether the last mentioned rates have been approved by the Georgia Railroad Commission?

Mr. Lutz: Yes, sir.

Mr. Baxter: What would be the effect if the defendant companies were to raise the rates on said classes from New Orleans to Atlanta the same as the rates from New Orleans to LaGrange?

Mr. Lutz: Unless all other lines competing with the roads advanced their rates in accordance with us, we would have to go out of the Atlanta business—we could not compete with them.

Mr. Baxter: Does the Atlanta & West Point Railroad and the Western Railway of Alabama have any soliciting agents in New Orleans?

Mr. Lutz: Yes, sir.

Mr. Baxter: For what purpose are those agents stationed there?

Mr. Lutz: Soliciting traffic-getting business to go over the line of road.

Mr. Baxter: That is, from New Orleans to Atlanta?

Mr. Lutz: Yes, sir.

Mr. Baxter: Are there any lines which actually compete with the lines of the defendant companies for the transportation of traffic from New Orleans to Atlanta?

Mr. Lutz: Yes, sir; there are several; there are three lines out of New Orleans?

Mr. Baxter: I wish you would name the initial lines?

Mr. Lutz: The Louisville & Nashville for one; the Illinois Central for another; and the New Orleans and Northeastern.

106 Mr. Baxter: Are there any lines which compete with the defendant companies for the transportation of the same classes of freight from Boston, New York, Philadelphia, Baltimore, Cincinnati and Louisville and other Ohio and Mississippi River points to Atlanta?

Mr. Lutz, Yes, sir; quite a number.

Mr. Baxter: Are the all-rail rates which are charged on said classes of freight from Boston, New York, Philadelphia and Baltimore to Atlanta affected to any extent by the ocean rates and Savannah river rates and rates fixed by the Georgia Railroad Commission from Augusta, Savannah and Brunswick to Atlanta?

Mr. Lutz: Yes, sir.

Mr. Baxter: I wish you would examine tables A, B, C, D, on pages 5, 11, 13, and 14 of defendants' answer in this case and state whether said tables are correct or where they are incorrect. If you had ever examined or will examine them, state what you know about that?

Mr. Lutz: I have examined them pretty carefully and I think they are correct.

Com'r Clements: Are those tables of rates or distances or both?

Mr. Lutz: Table of rates.

Mr. Baxter: Table A on page 5 is a table of rates; so is table B on page 11; so of table C on page 13; and so of table D. They are all tables of rates.

What is the average capacity in fully loaded freight cars of freight locomotives on the defendants' line from Montgomery to Atlanta?

Mr. Lutz: Take the 18 inch, ten wheel freight engine, the average is 360 tons.

Mr. Baxter: How many fully loaded freight cars does that amount to?

Mr. Lutz: The average number of freight cars pulled?

Mr. Baxter: I mean what is the average capacity of those locomotives estimated in fully loaded cars?

Mr. Lutz: That would be about 15 loaded freight cars on the basis of 24 tons to the car.

Mr. Baxter: What is the average number of loaded cars actually hauled in freight trains from Montgomery to Atlanta?

Mr. Lutz: The average number of cars including loaded and empty is 36.38 on trains one and two; on three and four 39.54; on trains five and six, 21.74.

107 Mr. Baxter: How many of those cars are loaded? You have given the number of loaded and empties?

Mr. Lutz: The average number of loads on those different trains is 20.94 and empties is 10.14.

Mr. Baxter: What did you say was the average capacity of the engines?

Mr. Lutz: 360 tons; based on 24 tons to the cars, about 15 loads; 12 tons to the car would make it 30.

Mr. Baxter: Have you not got your figures wrong there? I understood you to say the capacity is only about 15 and you actually carried about 20?

Mr. Lutz: I am speaking about it on the basis of 24 tons to the car.

Mr. Baxter: What is the average capacity of your engines in loaded cars?

Mr. Lutz: I should think about 30.

Mr. Baxter: What is the average number of loaded cars actually pulled on those trains from Montgomery to Atlanta?

Mr. Lutz: 20.94.

Mr. Baxter: Then the capacity of your locomotives is such that they could pull ten loaded cars more than they get?

Mr. Lutz: Yes, sir; I should judge so from the information I get.

Mr. Baxter: What is the revenue per ton per mile which the line between Montgomery and Atlanta realize from the transportation of each of said classes of freight?

Mr. Lutz: On the different classes?

Mr. Baxter: Yes, sir; if you have that figured out, just file it.

State whether or not the amount realized by the line between Montgomery and Atlanta for the transportation of said several classes of freight passing from New Orleans to Atlanta does or does not exceed the additional cost of movement of said freight per ton per mile?

Mr. Lutz: Yes, sir; it does exceed the additional cost.

Mr. Baxter: You are not hauling that competitive traffic then at a loss?

Mr. Lutz: No, sir.

Mr. Baxter: That is all. (The papers and state-
108 ment just referred to are marked Exhibit No. 19 (2).)

Cross-Examination.

Com'r Clements: You state that, in your judgment, these rates were reasonable. What is the basis of that opinion?

Mr. Lutz: Well, in the first place, it is a rather difficult question to answer. I do not think the rates are unreasonable by any means. As is very often the case, here we are compelled to accept very low rates and if we were to accept on local business proportionally low rates as we accept on through business, it simply means starvation. I do not think the rates to LaGrange are unreasonably high by any means.

Com'r Clements: Does it not cost more to haul from New Orleans to Atlanta through LaGrange than it does to LaGrange? The cost of the road is more?

Mr. Lutz: No, sir; not in the way we handle the business. I suppose it costs fully three times as much to handle LaGrange business as it does Atlanta business notwithstanding the distance is greater to Atlanta than to LaGrange.

Com'r Clements: Will you make it a little clearer how it costs three times as much to haul like products to LaGrange?

Mr. Lutz: In the first place, take loaded cars for instance. They, as a rule, in a great many cases, are loaded by the shippers. The freight is loaded and the car goes right through to Atlanta and unloaded by the consignee. The stuff is loaded in solid carload lots; it is billed there solid and there is no rehandling at destination or at intermediate points, comes to final destination and is unloaded by the consignee.

Now, you take less than a carload—five barrels of molasses. That is brought down to the depot at New Orleans; a certain number of hands are employed there to receive it; it is put into the warehouse; then finally it goes into the cars. Suppose the five barrels of molasses are finally loaded; say it breaks bulk at Montgomery at the L. & N. depot; we have got to have a large number of hands to handle that class of freight; it is checked from one car out on the platform; transferred to another; then it comes to the Western Railway; it is taken out of the through train and transferred to a car that will be handled by the local train all the way from Montgomery to LaGrange.
109 Then it is brought to ultimate destination as fast as we can bring it. That five barrels of molasses is I believe handled anywhere from four to a dozen times. There is risk and loss connected with that. The percentage of loss is greater than it would be if through freight—the number of claims we have for losses is greater.

Com'r Clements: What you say is on the basis of comparison between carload lots to Atlanta and less than carload lots to LaGrange. Do you not in fact have the carload rate to both places?

Mr. Lutz: In some instances. But we always have sufficient amount of freight at these larger towns, such as New Orleans and Mobile to load a solid car for Atlanta. They are loaded right through. There is no handling at junction points. We take five barrels of syrup going to Atlanta and it is loaded in New Orleans and goes right through to destination at Atlanta. It is not one time in forty that it is not loaded through to destination.

Com'r Clements: Is the freight usually stopped off at LaGrange or is it actually hauled through to Atlanta and then hauled back again?

Mr. Lutz: If the freight is billed to LaGrange on our road we stop it off at LaGrange.

Com'r Clements: The rate to LaGrange is made up of the rate to Atlanta and then the local rate back?

Mr. Lutz: Yes, sir.

Com'r Clements: The actual movement of the shipment is simply to LaGrange?

Mr. Lutz: Yes, sir.

Com'r Clements: If in view of the disparity between the rates to LaGrange and these other shorter distance points and the Atlanta rates for the longer distance being lower, you testify they are all reasonable that is, not unreasonably high. Do you consider the Atlanta rate unreasonably low?

Mr. Lutz: Well, that depends a good deal upon the circumstances. Competition makes the rate to Atlanta; competition from eastern markets will naturally make the rates from New Orleans. On that class of goods we have to make a similar rate in order to allow New Orleans to compete, otherwise they could not do it at all. Circumstances make that entirely.

110 Com'r Clements: If all the roads in competition, rivals of yours in competition between New Orleans and Atlanta and these other junction points, and also the roads from eastern markets to Atlanta would observe the same rule, it would not run you out of the through business, would it?

Mr. Lutz: No, sir.

Mr. Calloway: Your route is the shortest from New Orleans to Atlanta?

Mr. Lutz: Yes, sir.

Mr. Calloway: Your rate is lower than from the Ohio river or from eastern points, is it not?

Mr. Lutz: I do not remember exactly as to that. I think it may be a few cents under.

Mr. Calloway: It is lower?

Mr. Lutz: I could not answer as to that.

Mr. Calloway: It states so in your answer.

Mr. Lutz: There are some figures in the answer.

Mr. Calloway: Still, you have to compete with those longer lines and higher rates?

Mr. Lutz: Longer lines from what point?

Mr. Calloway: From New Orleans, and other supply markets, Ohio river points and eastern points—you compete with them?

Mr. Lutz: New Orleans has to compete with all markets.

Mr. Calloway: But you have the lowest rate and the shortest route?

Mr. Lutz: I cannot answer as to the lowest rate. We have the shortest route from New Orleans to Atlanta.

Mr. Calloway: Were you with the West Point road when it watered its stock?

Mr. Lutz: No, sir.

Mr. Calloway: You make money by hauling from New Orleans to Atlanta at the present rates?

Mr. Lutz: Yes, sir.

Mr. Calloway: But you would lose money at $1.43 by dropping off at LaGrange?

Mr. Lutz: If we made rates there on the same basis as to Atlanta we could not sustain the road.

Mr. Calloway: You make money hauling to Atlanta but lose it hauling to LaGrange?

111 Mr. Lutz: We could not live if we made rates on the same basis as Atlanta.

Mr. Calloway: You have extra charges for less than carload lots to take care of the extra cost over carloads. For instance, sugar in carloads is 18 cents; less than carloads, 21 cents?

Mr. Lutz: (Examining paper) The rate is 21 cents regardless of carloads.

Mr. Calloway: You would not say you did not?

Mr. Lutz: The figures I have here, do not indicate that we did.

Mr. Calloway: If you do, that is to take care of the trouble in handling the loose barrels?

Mr. Lutz: Yes, sir.

Com'r Clements: As that seems to be a question, we would like to know if you have compared your rates stated in the answer with your present rate sheets?

Mr. Lutz: No, sir; not with the present rate sheets. I compared them with the rates at the time they were put in. (Reading from paper.) Sugar in carloads, 18 cents; less than carloads, 21.

Mr. Calloway: That difference is for the extra trouble of handling—the three cents differential to Atlanta and LaGrange?

Mr. Lutz: Yes, sir.

Mr. Calloway: So that for the extra handling at LaGrange you get three cents?

Mr. Lutz: Yes, sir. If you made a shipment of a carload to LaGrange it is made on 18 cents to Atlanta plus the local back. That is the way it is made to LaGrange.

Com'r Clements: Is that rate sheet to which you have just referred filed with the Interstate Commerce Commission?

Mr. Lutz: Yes, sir.

Com'r Clements: When did that go into effect?

Mr. Lutz: It went into effect December 16th, 1895. There is a supplement to that tariff effective April 16, 1896, also filed with the Interstate Commerce Commission.

Mr. Calloway: I understand you to say you made money on first class freight at $1.03 to Atlanta?

Mr. Lutz: Yes, sir.

Mr. Calloway: And lost money at LaGrange at
112 $1.43?

Mr. Lutz: Yes, sir.

Mr. Calloway: Now, at Hogansville, you have the same expense there as to that five barrels. They do not ship in larger quantities there? You have just the same expense at Hogansville as at LaGrange and also at Palmetto?

Mr. Lutz: Yes, sir; the same expense.

Mr. Calloway: Palmetto is 25 cents cheaper and a longer distance?

Mr. Lutz: Yes, sir.

Mr. Calloway: On what?

Mr. Lutz: 25 cents cheaper on first-class.

Mr. Calloway: It is just as expensive to handle the business at Palmetto as at LaGrange? The shipments are as small?

Mr. Lutz: Yes, sir.

Mr. Calloway: It is shipped right by LaGrange?

Mr. Lutz: Yes, sir. I should judge so.

Mr. Calloway: So that you can handle the LaGrange business with as small expense as you can Palmetto?

Mr. Lutz: No, sir.

Mr. Calloway: It is more expensive per hundred?

Mr. Lutz: Yes, sir.

Mr. Calloway: You charge 25 cents more per hundred?

Mr. Lutz: Yes, sir.

Com'r Clements: Does all the business from New Orleans move on joint through rates to the points in controversy?

Mr. Lutz: Yes, sir; made on the lowest combination.

Com'r. Clements: But they are published through rates?

Mr. Lutz: I understand the initial lines publish those rates.

Com'r Clements: I understood you to say a while ago that your rates from Montgomery to West Point were the Alabama commission rates?

Mr. Lutz: Yes, sir.

Com'r Clements: Is that tariff which states the actual rate between any points specifically or it is a mileage tariff?

Mr. Lutz: I do not know.

Com'r Clements: For instance, what I mean is, how do you get at the rate between two given points on that line of road. The Alabama Commission does not publish a tariff which names every point. They name distances and within a cer-

113 tain range it is so much?

Mr. Lutz: I do not think they have a distance table at all. It is simply governed to a certain extent by the competition of markets.

Com'r Clements: How do you actually find out what their rate is between Montgomery and West Point?

Mr. Lutz: The Alabama rate?

Com'r Clements: The Alabama rate.

Mr. Lutz: Simply take our rate. That has to be submitted to them before it can go into effect.

Com'r Clements: Then, how do you ascertain what you may charge?

Mr. Lutz: That is by the regular tariff. They publish rates on the Atlanta & West Point Railroad; also have a mileage tariff.

Com'r Clements: You said that both those rates, in your judgment, were reasonable?

Mr. Lutz: Yes, sir.

Com'r Clements: You spoke of them as separate and several rates?

Mr. Lutz: Yes, sir.

Com'r Clements: Is it not the uniform practice almost in making rates on railroads to reduce the charge per ton per mile as the distance of the haul increases? You do not ordinarily make the joint through rate the sum of the locals, do you?

Mr. Lutz: No, sir; not in all cases, we do not. That of course depends entirely upon circumstances. In some cases we could not put it up on that kind of a scale. We are obliged to make our rates to common points based on the competition there. We can not charge more to Palmetto than the combi-

nation as shippers would simply ship to Atlanta and ship right back. That is frequently done.

Mr. Baxter: That is all. I will call Mr. Cary.

H. H. CARY, a witness on behalf of the respondents, having been duly sworn, testified as follows:

Mr. Baxter: Where do you reside?

Mr. Cary: At LaGrange.

Mr. Baxter: On the line of the Atlanta and West Point Railroad?

Mr. Cary: Yes, sir.

Mr. Baxter: How long have you lived there?

114 Mr. Cary: I have lived in LaGrange since January, 1870.

Mr. Baxter: Did you know anything of it as a town before you lived in it?

Mr. Cary: Yes, sir; something. I resided about ten miles from there for twenty-five years and it was my business point. I did not know a great deal of it. I came there on business occasionally.

Mr. Baxter: Do you remember how traffic from New Orleans would reach LaGrange before the railroad was built there?

Mr. Cary: From my own knowledge I do not know because I was not engaged in any sort of business that would give me information as to railroads.

Mr. Baxter: What is your information derived from? How did freight go from New Orleans to LaGrange before the railroad was built there?

Mr. Cary: I do not know that I could answer that question very intelligently. Now, the Western Railway of Alabama was continued from Montgomery up to West Point some time I think before the fifties and our cotton had to go to Columbus, Griffin and Atlanta. Some of my first crops I sent to each of these points and our supplies were bought at those places, such as heavy groceries and those things.

Mr. Baxter: You know of no shipments from New Orleans to that section?

Mr. Cary: I did not. I was not in any business that would lead me to investigate that any.

Mr. Baxter: At Griffin, was there a railroad?

Mr. Cary: Yes, sir; a railroad was there.

Mr. Baxter: You do not know the condition of things before the railroads were built there?

Mr. Cary: No, sir.

Mr. Baxter: You have no information upon that point?

Mr. Cary: No, sir; I have not.

Mr. Baxter: How did you reach Columbus, Griffin and Atlanta at the time you speak of?

Mr. Cary: We had to send our wagons. I sent cotton to Columbus by my own wagons and to Griffin and to Atlanta that was the only way.

Mr. Baxter: You would bring back supplies that way too?

Mr. Cary: We frequently did; yes, sir.

Mr. Baxter: How long did it take to make a round trip?

Mr. Cary: I could hardly tell. I never went along
115 with the wagons. I suppose to carry a load of cotton to Columbus which was about fifty miles, more or less, would take something like five days to make the trip.

Mr. Baxter: There and back?

Mr. Cary: Yes, sir. I frequently sent cotton from my former residence, Antioch, which I suppose is a little further than from LaGrange to Griffin.

Mr. Baxter: What is the distance to Griffin?

Mr. Cary: I do not remember the exact distance from LaGrange to Griffin. I go by the railroads. We are not sending wagons through the country now.

Mr. Baxter: Has there been any improvement in the town of LaGrange since the railroads got there?

Mr. Cary: A great deal, sir.

Mr. Baxter: What do you estimate its present population to be?

Mr. Cary: I would estimate it at about five thousand inhabitants.

Mr. Baxter: What was it before there were any railroads?

Mr. Cary: I could not say exactly, but it has increased very considerably. Now, to illustrate, there is a manufacturing establishment been built there within the last eight or ten years there near the depot. All this gives rise to a very considerable increase in the population. Another factory is about being completed which has already increased the population some and will increase it a great deal more.

Mr. Baxter: That is all, sir.

Cross-Examination.

Mr. Calloway: Do you ever ship any goods from New Orleans to LaGrange or anywhere else?

Mr. Cary: No, sir.

Mr. Calloway: You do not know anything about the discrimination?

Mr. Cary: No, sir; I am as ignorant as possible about that.

Mr. Calloway: You ride on a pass over the Atlanta and West Point Railroad?

Mr. Cary: Yes, sir.
Mr. Calloway: How long have you ridden on a pass?
Mr. Cary: A long time.
Mr. Calloway: Twenty years?
Mr. Cary: Yes, sir.
Mr. Calloway: I have nothing else.
116 Mr. Baxter: That is all, Mr. Cary. I will now ask Mr. Knott to take the stand.

S. R. KNOTT, a witness on behalf of the respondents having been duly sworn, testified as follows:

Mr. Baxter: The Louisville & Nashville Railroad Company is one of the defendants in this case. What connection have you with that company?

Mr. Knott: I am first vice-president.

Mr. Baxter: What connection have you with the traffic department of that company—the freight traffic?

Mr. Knott: The duties of my office require that I should direct and supervise the work of the freight and passenger departments of the company. In other words, the traffic of the company—its earning department.

Mr. Baxter: State whether the Louisville & Nashville Railroad Company is under any common management or control with the Atlanta & West Point and the Western Railway of Alabama?

Mr. Knott: It is not.

Mr. Baxter: I wish you would state what the rate is from New Orleans to LaGrange on class B?

Mr. Knott: 74 cents per hundred pounds.

Mr. Baxter: What is the rate from New Orleans to Newnan on class 1 and class C?

Mr. Knott: Rates from New Orleans to Newnan on first-class is $1.33 per hundred pounds; on class C it is 32 cents per hundred pounds.

Mr. Baxter: How long have you been engaged in the railroad traffic business, Mr. Knott?

Mr. Knott: In different capacities I have been associated with the traffic department about fifteen years.

Mr. Baxter: Are joint through rates as made by railroads in this country usually a combination of the local rates or less than that combination?

Mr. Knott: Joint through rates are arrived at in many different ways or rather in several different ways. The term joint through rates is sometimes applied to rates which are merely a
117 combination, that is, the sum of two or three existing rates added together to make the total rate between the point of shipment and the point of destination.

That method is by no means an unusual one of making through rates. For instance, through rates from New York, Philadelphia, Boston, Baltimore—what is known as trunk line territory—to points west of Chicago and points west of the Mississippi river, are made on the combinations of the rate from New York to the Mississippi river point added to the rate from the Mississippi river to the point of destination west of that river. Rates from points in the states east of the Missouri river to points west of the Missouri river, are, in many cases, made of combination rates, the sum of two rates. The large volume of the traffic that moves from points north of the Ohio river to points south of the Ohio river is, to a very large extent, handled on combination rates—the sum of the rates from the point of origin to the Ohio river crossing added to the rates from the Ohio river.

That is also true in respect of a very large part of the traffic that comes from east of the Mississippi river destined to points west of the Mississippi in the states of Texas and Arkansas—made on the combination of the rates.

Then, again, a joint through rate is made by agreement between connecting railways to establish a rate between two or more points on such connecting railways which may be less than the combination or the sums of the locals. But it is not unusual throughout this country to make a total rate by combination; that is, taking the sums of two or more existing rates.

Mr. Baxter: Well take the rates from New Orleans to Atlanta by the lines of the companies mentioned in the petition in this case. How are they made?

Mr. Knott: That is a through rate reached by agreement between the lines over which traffic moves from New Orleans to Atlanta, the agreement being made between the lines that participate in the movement and reach an agreement as to how that through rate shall be divided where it is less than the local rate of each line party to the agreement.

Mr. Baxter: Now, take the rates from New Orleans to LaGrange. How are they made?

Mr. Knott: The rate from New Orleans to La-
118 Grange is an illustration of what I term a combination rate. It is the sum of the rates from New Orleans to Atlanta and the rate from Atlanta to LaGrange.

Mr. Baxter: What, in your opinion, would be just and reasonable rates for railroad transportation from New Orleans to LaGrange on classes one, two, three, four, five, six, A B, C, D, E, and H and F and special sugar?

Mr. Knott: The classes you refer to are, I presume, those now used by the roads between New Orleans and LaGrange

to designate rates on different kinds of freight, and I think a reasonable rate from New Orleans to LaGrange would be the rate from New Orleans to Montgomery of the Louisville & Nashville and the rates of the Western Railway of Alabama, and the Atlanta & West Point Railroad from Montgomery to LaGrange if the conditions were such as to permit those rates to be secured or charged on the traffic.

Mr. Baxter: Are the rates that are in fact in effect from New Orleans to LaGrange greater or less than combination of the rates from New Orleans to Montgomery plus the rates of the Western Railway of Alabama to West Point plus the rates of the Atlanta & West Point Railroad to LaGrange?

Mr. Knott: They are less than that combination for the reason that a lower rate can be secured by means of the rate from New Orleans to Atlanta and the rate from Atlanta to LaGrange. So that the present rates, in my judgment, are less than could be reasonably charged if it were not for the lower rates in effect to Atlanta.

Mr. Baxter: What are the rates on the classes that I mentioned in my last question from New Orleans to Mobile? Have you a statement of that?

Mr. Knott: The rates from New Orleans, La., to Mobile, Ala., are, on first class, 50 cents per hundred; second class, 37; third, 25; fourth, 18; fifth, 15; sixth, 15; class A, 12 cents; B, 15 cents; C, 12½ cents; D, 10 cents; E, 15 cents; H, 18 cents per hundred pounds; and on class F, 25 cents per barrel; the rate on sugar from New Orleans to Mobile is 12 cents per hundred pounds, carloads or less than carloads.

Mr. Baxter: What are the rates charged on this class from Mobile to Montgomery?

119 Mr. Knott: First class, 5; second, 40; third, 30; fourth, 24; fifth, 20; sixth, 20; class A, 15; B, 20; C, 14; D, 12; E, 24; H, 19; F, 20 cents per barrel.

Mr. Baxter: Do you know what rates were allowed by the charter of the company between New Orleans and Mobile?

Mr. Knott: That line was chartered by the State of Alabama which vested in the Board of Directors the right to fix the rates, tolls, fares or charges for the movement of freight and passengers over the line and the enabling acts passed by the State of Mississippi and Louisiana vested the same rights in the directors.

Mr. Baxter: No maximum rates were specified?

Mr. Knott: No maximum rates were specified.

Mr. Baxter: How was it with reference to the road between Mobile and Montgomery?

Mr. Knott: The road between Mobile and Montgomery was

also chartered by the State of Alabama and at the time it was chartered, the power was vested in the Board of Directors to fix the rates. Since then, there has been legislative action, however, and the rates, that is, the rates in the State of Alabama, are subject to legislative control under the direction of the railroad commissioners of the State of Alabama so far as a reasonable maximum rate is concerned—I mean subject to that control. That is it is the advice of our counsel as to the right of the legislature to exercise that control.

Mr. Baxter: Do you know whether the rates you gave a while ago between Mobile and Montgomery have been approved by the Railroad Commission of Alabama?

Mr. Knott: They have, yes, sir.

Mr. Baxter: If distance alone could be allowed to control, would the rates from New Orleans to LaGrange be higher or lower than the rates from New Orleans to Hogansville, Newnan, Palmetto and Fairburn, respectively?

Mr. Knott: If distance alone controlled, the rates would be higher, or certainly not lower to Hogansville, Newnan, Palmetto, Fairburn, than the rates from New Orleans to LaGrange.

Mr. Baxter: Explain how the rates from New Orleans to LaGrange, Hogansville, Newnan, Palmetto and Fairburn, respectively, would be made, if distance alone could be allowed to control?

120 Mr. Knott: If other conditions would permit, it is the practice to have rates increase as the length of the haul increases; not of course, in the same proportion; that is, the rate per ton per mile for a long haul will, of course, be lower than the rate per ton per mile for a short haul; but I know of no railroad that arbitrarily or at its own option makes a lower rate for the longer haul; and the rates from New Orleans to points named would, if other conditions permitted, be made on the basis of the rates from New Orleans to Montgomery and the rates from Montgomery to those points; and I find that the rates from Montgomery to Hogansville for illustration, are higher than the rates from Montgomery to LaGrange, Hogansville being further from Montgomery than LaGrange; and so the rates from Montgomery to Newnan are higher than from Montgomery to LaGrange.

Mr. Baxter: State what the rates from New Orleans to LaGrange, Hogansville, Newnan, Palmetto and Fairburn would be if made by adding the rates from New Orleans to Montgomery to the rates from Montgomery to said stations. If you will refer to page 5 of defendants' answer in this case those figures are given.

Mr. Knott: Those figures are correct as given on page 5 of

the answer, being the sum of the rates from New Orleans to Montgomery and from Montgomery to each of the points named at the time the answer was made.

Mr. Baxter: Now, if it were possible to make rates from New Orleans to said stations by adding the rates from New Orleans to Montgomery and the rates from Montgomery to said stations, would the rates then arrived at be higher or lower than the rates now charged from New Orleans to said stations?

Mr. Knott: They would be higher in each case.

Mr. Baxter: Now, will you explain then, Mr. Knott, why it is that distance alone can not be allowed to control in making rates from New Orleans to those stations?

Mr. Knott: Because of the effects of competition enjoyed, respectively, at each one of those stations; that is, the effect of the competition which has pulled down the rates at Atlanta, the conditions in Atlanta not permitting the rates from New Orleans to that point to be made the maximum that they would be if distance alone controlled the Atlanta & West Point and the Western Railway and the Louisville & Nashville in making the rates; and the rate at Atlanta being reduced through the effects of these conditions at Atlanta, the benefit of
121 those reductions in the Atlanta rates extends back over the Atlanta & West Point Railroad so that the rates to Fairburn and Palmetto and Newnan, LaGrange and Hogansville are lower than they would be except for the low rate in effect from New Orleans to Atlanta.

Mr. Baxter: Then, if I understand you, the rate from New Orleans to Atlanta would be higher than to any other of those stations if distance could control?

Mr. Knott: Following the general rule to which I refer if it were possible or practicable to do that, the rates from New Orleans to Atlanta would be certainly not lower than the rates to LaGrange or Palmetto, or Hogansville or Fairburn or intermediate points.

Mr. Baxter: State whether the various classes of freight which are shipped from New Orleans to Atlanta over the lines of the defendant companies, whether the same classes of freight are also shipped to Atlanta from other points—other markets of supply, such as Boston, New York, Philadelphia and Baltimore?

Mr. Knott; They are to a very great extent, yes, sir.

Mr. Baxter: How are the rates on the various classes of freight from Boston, New York, Philadelphia and Baltimore to Atlanta made? I mean to what extent, if any, are they controlled by the ocean rates for any part of the route and to

what extent controlled by rates fixed by the Georgia Railroad Commission.

Mr. Knott: They are controlled by the rates of the water lines from Baltimore, Philadelphia, New York, Boston and Providence to Charleston, Savannah or Brunswick added to the rates from Savannah or Brunswick or Charleston to Atlanta and the rates from Savannah and Brunswick to Atlanta are fixed or controlled by the Georgia Railroad Commission and they are also further affected by the competition of steamboats in the Savannah River which enables rates to be made up to the interior of the state as far as Augusta by the all-water lines from eastern cities to Augusta and the rates thus made to Augusta in turn affect the rates that can be charged from Savannah to Atlanta.

Mr. Baxter: State whether there is any actual competition between the various carriers, all rail, and the carriers by rail and water whose lines are engaged in the transportation of freight from Boston, New York, Philadelphia and
122 Baltimore, respectively, to Atlanta?

Mr. Knott: The rates that can be secured for the carriage or traffic to Atlanta are, as I have said, fixed by the rail and water carriers through the South Atlanta Ports, Brunswick and Savannah. The all-rail lines, however, do on certain classes of traffic compete at a little higher rate than the rail and water rates. Such higher rate being supposed to represent the slight difference in the service.

Mr. Baxter: What per cent of that traffic, say from New York and other eastern seaboard points to Atlanta would be carried by the all-rail lines and what by the rail and water lines, if you have any estimate?

Mr. Knott: I could not say from any personal knowledge, but from general knowledge from different reports made there is only a very small percentage carried from the Cities of New York, Philadelphia, Boston and Baltimore by the all-rail routes in competition with the rail and water lines to Atlanta. The all-rail lines probably get some business, not at the cities named, direct, but at some intermediate point or some interior point not reached by the steamers.

Mr. Baxter: Do those all-rail lines from the east to Atlanta secure as much as ten per cent of the traffic that is competitive between them and the rail and water lines?

Mr. Knott: I am not in a position just now to make an estimate as to the percentage.

Mr. Baxter: Can you give us the rates charged on the classes there mentioned above from Boston, New York, Philadelphia and Baltimore to Atlanta? Have you that eastern tariff?

Mr. Knott: The rates from Boston, New York and Philadelphia upon the rail and water routes named to Atlanta, Ga., are on first class, $1.14; second, 98 cents; third, 86; fourth, 73; fifth, 60; sixth, 49; class A, 36; B, 48; C, 40; D, 39; class E, 58; class H, 68; class F, 78 cents per barrel.

The rates from Baltimore to Atlanta are, first class, $1.07; second, 92 cents; third, 81; fourth, 69; fifth, 56; sixth, 46; class A, 34; B, 45; C, 37; D, 36; E, 55; H, 65; class F, 72 cents per barrel.

Mr. Baxter: State whether or not the various classes of freight above referred to as being shipped from New Orleans to Atlanta over the lines of the defendant companies are also shipped to Atlanta from Cincinnati, Louisville and other points on the Ohio and Mississippi Rivers?

123 Mr. Knott: There is to a large extent competition, that is, shipping of the same classes of freight from New Orleans and from Cincinnati, Louisville and points in and beyond the Ohio river.

Mr. Baxter: Please give the rates from Cincinnati and Louisville and other Ohio river points to Atlanta on the various classes of freight above referred to? If you have that in the form of a table you could put that in as an exhibit, as it would save time.

Mr. Knott: I have only a pencil memorandum.

Mr. Baxter: Well, make out one and file it as an exhibit, as it will save time. (The same is marked exhibit No. 20.)

Mr. Baxter: Are you prepared to explain the relation which exists between rates charged from Boston, New York, Philadelphia and Baltimore to Atlanta and the rates charged from Louisville, Cincinnati and other Ohio and Mississippi river points to Atlanta, and if any such relation does exist can you explain how it came to be established or brought about?

Mr. Knott: I do not know as I quite understand your question.

Mr. Baxter: Now, there is a certain rate from Baltimore to Atlanta and a certain rate from Louisville and Cincinnati to Atlanta. Are they the same?

Mr. Knott: On the same classes of freight, the rates from Louisville and Cincinnati to Atlanta are the same as from Baltimore. By the relation of rates I presume you mean an understood or agreed basis as the term is used, for making rates.

Mr. Baxter: Yes, sir; that is it.

Mr. Knott: That is, if the rate is fixed from Baltimore to Atlanta then by agreement a corresponding rate may be made from Louisville or Cincinnati to Atlanta. With that understanding of the question, I will say there is such a relation. The rates from Philadelphia, New York and Boston are the same

from each point to Atlanta. The rate from Baltimore to Atlanta is less than the rate from Philadelphia. Now, that adjustment as between the eastern cities is brought about by the fact that the different steamship lines competing actively with each other from Philadelphia, New York and Boston make the same rates to South Atlantic ports to which they sail, whichever port that may be; say, Savannah, for instance, and of course that will make a uniform rate from those three ports via Savannah to Atlanta or Macon or some interior Georgia point.

124 The steamers sailing from Baltimore make a little lower rate to the South Atlantic port than the rate from Philadelphia or New York to the same port.

The relation established as between the rates from Baltimore and the rates from Cincinnati and Louisville has grown up or rather grew out of the conditions which required that there should be some understanding between competing lines as to the rates on similar kinds of traffic from different and competing points of shipment. The necessity for that has existed ever since there has been any competition in the carriage of through shipments of similar kinds of freight from the East and from the West into the South.

And that competition began almost immediately after the war and through lines for handling freights between Boston points began to be inaugurated. The steamers running from the different ports of Baltimore, Philadelphia, New York, Boston to the different ports along the South Atlantic began to issue in connection with rail lines from Savannah and Brunswick and Charleston, through rates and through bills of lading and in the same way as the lines from the Ohio river at Louisville or Evansville began to issue through rates and through billing from those points to points in Georgia, Atlanta, for instance, and to solicit traffic from their connections beyond those points, that is, beyond Louisville and beyond Evansville and beyond Cincinnati, when destined to Atlanta. Well, now, as the routes which led from Chicago, for instance, or from Indianopolis to Baltimore and New York were also competing for business from those points, destined to Atlanta, or Macon, or Augusta, it followed that lines which are competing for the same traffic originating at the same points, but which proposed to carry it down across the Ohio river and through Nashville and Chattanooga into Atlanta and Macon had to have some kind of an understanding as to what rates were to be quoted by the different routes, and that understanding was arrived at through conferences of traffic official and through rate wars and through arbitration and also sometimes through traffic agreements or associations. And in order to establish some basis which ship-

pers and carriers as well should know what a rate was between competing points to a common point of destination, why the different lines competing for that traffic got together and, as I say, either as a result of rate wars or mutual agreements between themselves, or the result of arbitration, estab-
125 lished what we term a basis for the relative adjustment of rates.

Mr. Baxter: Giving Louisville and Cincinnati on certain classes the same rate as Baltimore, Baltimore taking the lowest rate of the northeastern ports?

Mr. Knott: Baltimore has the lowest rate made from any of what are termed the eastern cities and the present agreement is that on certain classes, classes numbered from one to six, the rate from Baltimore to Atlanta being fixed by the rail and water routes, that the lines from Louisville and Cincinnati may use the same rate to Atlanta.

Mr. Baxter: Now, there are certain other points such as Evansville, Jeffersonville down to Memphis and Vicksburg, all the way to New Orleans the rates from these other points on the Ohio and Mississippi rivers to Atlanta do they bear a certain relation to the rates that obtain from Cincinnati and Louisville to Atlanta?

Mr. Knott: Yes, sir; because they are arrived at under the same conditions to which I have referred. That is, the conditions which made it necessary that there should be some understanding as between the lines coming in from the East and from the West into Atlanta as to what rates shall be on the articles shipped from both points. It was also necessary that there should be some understanding as to what the rates should be from western points as related one to the other on articles of the same kind shipped to a common point of destination such as Atlanta; and the agreement in that respect had been reached through the same history as the agreement with regard to eastern rates; that is, the history of contentions and rate wars and then agreement and then arbitration. The present relations of those rates as between Louisville and Cincinnati and Evansville and Cairo and Mississippi river points—Memphis, Vicksburg, Huntington and New Orleans has been in effect for nearly ten years—for more than ten years. When I say the present relation, I do not mean the present rates, but the present basis for making rates from those points. The present basis was fixed first by Mr. James R. Ogden, who sat as arbitrator in March, 1886, and established the basis of rates that should obtain in making up tariffs from Cincinnati, Louisville, Evansville, Henderson, Cairo, Memphis, Huntington, Vicksburg and New

Orleans to Chattanooga, Atlanta, Macon, Birmingham, Montgomery and the large territory south of the Ohio river and east of the Mississippi river. That decision is set out in the printed circular I have here.

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Mr. Baxter: Will you file that as an exhibit to your testimony, please?

Mr. Knott: Yes, sir. (The same is marked Exhibit No. 21.)

Mr. Knott: That circular is dated March, 1886, No. 5.

Now, Mr. Ogden's decision was not satisfactory to all the lines and the agreement under which he acted provided for an appeal from his decision to another arbitration and that appeal was taken and by agreement was submitted to Judge Thomas M. Cooley and Judge Cooley reviewed Mr. Ogden's decision after argument submitted by the lines in interest and made his decision on May 29th, 1886, and that is set forth in printed circular No. 17, series of 1886. Judge Cooley made some changes in Mr. Ogden's basis of rates, but as a whole confirmed it.

Mr. Baxter: Please file that. (The same is marked Exhibit No. 22.)

Mr. Knott: Now, that established a general basis of rates between what we term Ohio river points and Mississippi river points to southeastern territory; that is, the territory east of the Mississippi river and south of the Ohio river. Of course each line at each city where it is specially interested, believes that some better adjustment might have been secured but so far no better adjustment as a whole has been secured. The question has come up in different ways at different times and has sometimes gone to arbitration again. The last decision that I remember was made by arbitration of the Southern Railway & Steamship Association which decided certain relative rates as between Memphis and New Orleans to Chattanooga and Atlanta and defined territories in that section of the country. That was made about two years ago, January, 1894, and that is set forth in circular letter No. 38, and in making that decision they set out what rates from New Orleans shall be, as compared with the rates from Memphis.

Mr. Baxter: I wish you would file that. (The same is marked Exhibit No. 23.)

Mr. Knott: That decision was rendered by a board of arbitrators, consisting of three members, John Screven, Thomas M. Carter and E. K. Sibley; rendered at Atlanta, Ga., January, 19th, 1894.

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Mr. Baxter: What is the difference in the rate between New Orleans to Atlanta and from Cincinnati and Louisville to Atlanta?

Mr. Knott: On the classes on which a recognized difference exists, that is, on the same classes of freight shipped from both points, the difference is four cents per hundred pounds less from New Orleans than from Cincinnati to Atlanta.

Mr. Baxter: State whether or not there is any actual competition between such markets as Boston, New York, Philadelphia, Baltimore, Cincinnati, Louisville and New Orleans and the various Mississippi river points, including New Orleans, for the various classes of freight above referred to, in the Atlanta market?

Mr. Knott: Yes, sir; to a very large extent.

Mr. Baxter: Suppose the railroads in this case should increase the rates on the various classes of freight from New Orleans to Atlanta so that they should be the same as from New Orleans to LaGrange, what would be the effect as to the trade between New Orleans and Atlanta as compared with the trade from Boston, New York, Philadelphia, Baltimore, Cincinnati and Louisville and other Ohio and Mississippi river points?

Mr. Knott: The effect would be to divert the trade from New Orleans as shipped now in competition with Baltimore, Cincinnati and Louisville from New Orleans to the other markets. It would divert that traffic from the lines running between New Orleans and Atlanta. I say the effect would be to divert the trade, because such an advance in the rates from New Orleans without a corresponding advance in rates from Baltimore, Louisville and Cincinnati would result in that trade going to those points. That there is a necessity for some understood relation between rates, I think is proven by the history of the rates to which I have referred—the forcing of the question to arbitration, of rate wars and conventions and traffic agreements; and I think it is pretty well established that the rate from Baltimore to Atlanta, for illustration, can not be advanced to any material amount above the present rates, for the reason that the rate is made now about as high as the rates of the steamer lines from Baltimore to Savannah, and the local rates from Savannah to Atlanta, affected as I have stated, by the competition in the Savannah river as far as Augusta.

Mr. Baxter: I wish you would file a memorandum showing the rates on the various classes above referred to from
128 New Orleans to Montgomery and also from New Orleans to Atlanta.

Mr. Knott: I think I quoted the rates from New Orleans to Montgomery.

Mr. Baxter: From Mobile to Montgomery, I think.

Mr. Knott: They are as set forth in Table B, on page 11 of the answer of the Louisville & Nashville Railroad in this case. It is also in this statement. (The same is marked Exhibit No. 24.)

Mr. Baxter: Suppose the rates from New Orleans to Atlanta were increased so as to be the same as from New Orleans to LaGrange, what effect would such increase of the rates to Atlanta have upon the commerce of Atlanta as compared with the commerce of Montgomery provided the same increase was not made from New Orleans to Montgomery?

Mr. Knott: I should say that it would be very favorable to the merchants and shippers of Montgomery, the trade at Atlanta and Montgomery having adjusted itself to the rates as now established, or practically those rates, with the same conditions as they now are.

Mr. Baxter: What difficulty would there be in making a similar increase from New Orleans to Montgomery so as to preserve that equilibrium between Montgomery and Atlanta?

Mr. Knott: The rail rates now in effect from New Orleans to Montgomery can be and are those that can be obtained in competition with the boats to Mobile and the boats plying the Alabama river from Mobile to Montgomery. Those boats ply anywhere from six to ten months during the year and run sometimes as frequently as three times a week; and it is not at all unusual, in fact, during the boating season it is of almost daily occurrence to have freight shipped from New Orleans to Mobile paying the local to Mobile and then paying the boat rate from Mobile to Montgomery and thereby getting a somewhat lower rate than the direct rail rate. So that to advance the Montgomery rate would simply mean an increase of the boat business. It might subject the Montgomery merchant to some inconvenience sometimes, and it would not be quite as good service as the direct rail route, but it is entirely practicable for them to secure their freights at the present or lower rates than the present, if an attempt were made to advance the rates from New Orleans to Montgomery by the rail lines.

Mr. Baxter: To that water competition in the Alabama river practically prevents an increase of the rail rate from New Orleans to Montgomery?

129 Mr. Knott: Absolutely; yes, sir.

Mr. Baxter: Then if you increased the rates from New Orleans to Atlanta without increasing the rates from New Orleans to Montgomery, it would divert the traffic to Montgomery?

Mr. Knott: It would be a benefit to Montgomery and would certainly divert some trade from Atlanta, unless Atlanta could be supplied from some other market.

Mr. Baxter: Please look at Table C on page 13 of the defendants' answer and see if that is correct?

Mr. Knott: That seems to be correct. It was prepared under my direction when the answer was filed.

Mr. Baxter: Please examine Table A on page 5 of the answer and state whether that table is correct?

Mr. Knott: That correctly sets forth the sums of the rates from New Orleans to Montgomery and the rates from Montgomery to the local stations named.

Mr. Baxter: I understood you to say just now that table D on page 14 of the answer was correct. Am I right?

Mr. Knott: I have not been asked about Table D, but C, on page 13.

Mr. Baxter: I thought you filed some paper and you said it was the same as table D. Please state whether Table D, on page 14 of the answer is correct, or not?

Mr. Knott: Table D sets forth the rates from New Orleans to LaGrange, Hogansville, Newnan, Palmetto and Fairburn, made on the rates via Atlanta and compared with the rates from New Orleans to the same stations made on the combination of rates via Montgomery and was correct at the time it was compiled and this answer was filed.

Mr. Baxter: State what carriers actually compete for the transportation of traffic between New Orleans and Atlanta, and give the length of the different competing lines, if you have the figures?

Mr. Knott: There are some ten or twelve different routes competing for traffic, that is, for the movement of freight between New Orleans and Atlanta. The Louisville & Nashville Railroad via Montgomery and the Western Railway, and the Atlanta & West Point Railroad, 495 miles; the New Orleans and Northeastern Railroad to Meridian, the Alabama Great Southern to Birmingham, and the Southern Railway, 615
130 miles; the New Orleans & Northeastern to Meridian; the Southern Railway to Selma; the Western Railway and the Atlanta & West Point Railroad, 526 miles; the Louisville & Nashville Railroad to Anniston, the Southern Railway to Atlanta, 573 miles; the Louisville & Nashville Railroad to Birmingham, the Southern Railway to Atlanta 583 miles; the Louisville & Nashville Railroad to Dukes, Ala., the East & West Railroad via Cartersville and the Western & Atlantic railroad, 612 miles; the New Orleans & Northeastern to Meridian, the Alabama Great Southern to Chattanooga and the Western & Atlantic, 630 miles; the Louisville & Nashville Railroad to Montgomery and the Central of Georgia to Atlanta, 644 miles; the Illinois Central Railroad to Winona and the Southern Railway of Atlanta, 647 miles; the Louisville & Nashville Railroad to Gadsden,

Chattanooga Southern and Western & Atlantic, 729 miles; the Louisville & Nashville Railroad to Gadsden, Nashville, Chattanooga & St. Louis to Chattanooga and the Western & Atlantic, 528 miles; the Illinois Central Railroad to Jackson, Tenn., and the N. C. & St. L., 882 miles.

Mr. Baxter: Does any such competition exist at LaGrange as exists at Atlanta that you have described in your testimony?

Mr. Knott: No, sir; only to the extent that LaGrange gets the benefit of the competition up to Atlanta.

Mr. Baxter: Does the Louisville & Nashville Railroad have soliciting agents in New Orleans to solicit traffic by the lines of the defendant companies to Atlanta?

Mr. Knott: Yes, sir.

Mr. Baxter: Do you know whether the Illinois Central and the New Orleans and Northeastern Railroad have such soliciting agents in that market?

Mr. Knott: The Illinois Central actively competes for and secures traffic both via Winona, Miss., and the Southern Railway and via Jackson, Tenn., and the N. C. & St. L.; the New Orleans & Northeastern also solicits and secures a very large portion of the traffic by different connections through Meridian and Selma or Meridian and Birmingham, or Birmingham and Chattanooga.

Mr. Baxter: That is all.

Cross-Examination.

Com'r Clements: Do I understand you to say that the Illinois Central secures business from New Orleans by
131 way of Jackson, Tenn., and the Nashville Chattanooga & St. Louis to Atlanta?

Mr. Knott: Yes, sir; the divisions are in effect that way and business secured that way.

Com'r. Clements: And actually moves that way?

Mr. Knott: Actually moves that way. It gives them the opportunity of different deliveries to Atlanta.

Com'r. Clements: Well, to go back. I think you said at the beginning of your testimony, you used some illustrations of the making of through rates by combinations. For instance, from Ohio river points to southern points and the rates from the Ohio river to points in the north or west. Now, is it not true that in many instances that sort of combination on the Ohio river would be a combination of the local rate to the river from the northern point and then the through rate from the river to the southern point. To illustrate, suppose it was a rate from some point north of the Ohio river to Macon, Ga., and it should come over the

Queen & Crescent or the Cincinnati Southern to Cattanooga and then over some road to Atlanta, and still another to Macon. That would not ordinarily be the sum of the locals, would it? That would be a through rate?

Mr. Knott: The rate from the Ohio river at Cincinnnati to Macon is what we term a joint through rate; a rate from Cleveland or Toledo or Columbus to Macon would be a combination of two rates.

Com'r. Clements: It would be more than that, would it not be a combination of a local rate added to a joint through rate?

Mr. Knott: The rate from Cleveland, Ohio, to Cincinnati, is not a local rate.

Com'r. Clements: That might be a joint through rate.

Mr. Knott: It might be a joint rate over two or more connecting lines.

Com'r. Clements: So that might be a combination rate made of two locals, but in most cases it would be a through rate composed of joint rates?

Mr. Knott: Not in most cases. If I understand what is meant by local—if by that is meant the individual rate of one road, why, then the rate from Cincinnati to Montgomery would be a local rate because it moves over one line, the Louisville & Nashville; one line between those points. So too, the rates on traffic passing between points north of the Ohio river,
132 Toledo, Columbus, Sandusky, Chicago, Cleveland, to Chattanooga would be the sums of the rates to Cincinnati and the rate of the Cincinnati Southern from Cincinnati to Chattanooga. Now, that, according to the terms used here this morning, would be the sum of the local rates, but, of course, we all know the rate from Cincinnati to Chattanooga is not in the general acceptance of the term a local rate because the traffic is competed for by two or more lines, competed for at the rate established by the Cincinnati Southern.

Com'r. Clements: So that it is true that from points north of the Ohio river to southeastern points generally, the joint through rate or the through rate is not the sum of the different locals, but is less than that.

Mr. Knott: From the Ohio river?

Com'r. Clements: From points beyond the Ohio river to points this side?

Mr. Knott: As a general thing the rate, though not entirely so, certainly to the territory east of the Mobile & Ohio Road is the sum of the two rates—the rate from the north into the river crossing whether it be Cincinnati, Louisville or Evansville and the rate from these point to the point of destination in the south.

Com'r. Clements: Those two added together. But in most cases they are less than the sum of the locals, are they not?

Mr. Knott: The through rate from Cincinnati to Macon and to Atlanta is less than the sums of the locals of all the roads going to make up the route.

Com'r. Clements: The same is true of the trunk line territory to the Mississippi river? That in many cases would be less than the sum of the strictly locals?

Mr. Knott: To illustrate, the rate from New York to St. Louis, East St. Louis is not made up of the rate from New York to Pittsburg and the rate from Pittsburg to East St. Louis. It is a joint through rate.

Com'r. Clements: And less than the sums of the several individual rates?

Mr. Knott: In that case, it is less than the sums of the different parts of the line that compete for the traffic over that route.

Mr. Calloway: If you were to give us a rate of $1.69 instead of $1.43 to LaGrange you would really be doing us justice? You were really doing us a favor by cutting off some, is that it?

133 Mr. Knott: If I understand your question correctly, it is true that the rate on first class from New Orleans to Montgomery added to the rate from Montgomery to LaGrange is $1.69 and the present rate is $1.43 to LaGrange.

Mr. Calloway: The New Orleans & Northeastern then pull the stuff 717 miles and you pull it 424 miles and they pull you down 26 points, then?

Mr. Knott: It is at their option whether they haul it that way.

Mr. Calloway: This competition of 717 miles to Atlanta is what forces you down on a 424 mile haul?

Mr. Knott: Oh, no, you misunderstood me.

Mr. Calloway: You said that made the rate as low as it is.

Mr. Knott: The New Orleans & Northeastern is not the road by itself that fixes the rate to Atlanta. That road with a carriage of 516 miles to Atlanta competes with the Louisville & Nashville—

Mr. Calloway: I thought that was the Illinois Central.

Mr. Knott: 647 miles to Atlanta—the New Orleans & Northeastern and the Louisville & Nashville and the Illinois Central have established those rates to Atlanta—

Mr. Calloway: You all made the rates.

Mr. Knott: No, we did not make the rate. If I made myself clear in my first statement, I think it follows that none of the roads leading from New Orleans to Atlanta can be said to

have made any rate at all. They simply acepted certain conditions which they found at Atlanta and by agreement or by arbitration arranged to meet those conditions uniformly by each of the several ten or twelve different routes competing for the business. But, as a matter of fact, the railroads can hardly be said to have made any rate at all. They have to accept the rates made.

Mr. Calloway: Do you handle any goods by Duke's, Alabama?

Mr. Knott: We have given the East & West Railroad via Cartersville the right to compete that way.

Mr. Calloway: Is the tonnage very great on that line?

Mr. Knott: It is very small.

Mr. Calloway: Your line is the shortest line to Atlanta?

Mr. Knott: The shortest from New Orleans.

134 Mr. Calloway: You have a lower rate from New Orleans to Atlanta than from New York, Boston, Philadelphia and Baltimore or from any of the Ohio river points have you not? You all have a lower rate, four on Baltimore and two on Philadelphia and Boston and New York?

Mr. Knott: I do not remember the exact difference as between Philadelphia, New York and Boston. The difference on certain classes, not on all classes, as between New Orleans and Cincinnati is four cents per hundred pounds and the Baltimore rail and water rate is supposed to be the same as the rate from Cincinnati to Atlanta.

Mr. Calloway: The other three cities are eight cents higher?

Mr. Knott: In some cases I think they are seven.

Mr. Calloway: New Orleans can get into Atlanta cheaper than any Ohio river supply markets or eastern supply markets?

Mr. Knott: That depends entirely upon what she has to ship and where she brings it from.

Mr. Calloway: New Orleans can ship to Atlanta cheaper than those points?

Mr. Knott: On some classes of goods the rates to Atlanta are four cents less from New Orleans. On some commodities the difference is very much more than four cents. On sugar, the rate from New Orleans is more than four cents less than the rate from Louisville. That rate has been brought down by a series of rate wars and the lines from the Ohio river not attempted, as we term it, to keep an agreed relation between the New Orleans and Ohio river points on that particular commodity.

Mr. Calloway: The refineries are in the east—not in the west. It is four cents on the classes.

Mr. Knott: It is as stated in the answer.

Mr. Calloway: You have the shortest line from New Orleans to Atlanta and the lowest rate of any other supply market and still you have to compete with the New Orleans & Northeastern and the Illinois Central, while your line is the shortest —have to compete with the Ohio river and eastern supply markets while your rates are the lowest?

Mr. Knott: I think I would put that a little differently. We do in New Orleans compete with the New Orleans & Northeastern and the Illinois Central and they compete with us; we have the short line yet they compete with us; very much to our regret. It is because we cannot help it and not from choice. In the same way the New Orleans merchant when he comes to compete in business in Atlanta he has to compete with the Baltimore merchant or the New York merchants if he is going to sell the same class of goods. Whether that four cents gives the New Orleans merchant an advantage in that competition, is an open question. It might not give any advantage at all on some classes. But Judge Cooley with the best lights before him and after elaborate argument in reviewing the decision of Mr. Ogden decided that four cents difference between New Orleans and Cincinnati to Atlanta was not an unjust or unreasonable preference and fixed the basis which I say has been confirmed by subsequent arbitrations.

Mr. Calloway: I believe in regard to the carload question, you are in favor of the less than carload shippers—putting it the same as the carload? There is some kind of a circular out signed by you favorable to the less than carload shipper?

Mr. Knott: On a number of classes of freight I have favored and would continue to favor a difference between carload and less than carload rates. But so far as LaGrange is concerned, as related to Atlanta, the question as I understood Mr. Lutz's illustration, was not based upon the matter of the carload or the less than carload rates. I think what he intended to say was that handling freights at a local station, involving as it did the handling largely in less than carloads, was more expensive than handling freights at the terminal stations, for even where less than carloads are shipped to the terminal station the freight can be put in a through car, and Mr. Lutz's illustrated the matter by saying that a shipment from New Orleans to LaGrange might require several rehandlings; if it is moved by Montgomery it would require rehandling at Montgomery; and then from Montgomery it would have to be handled on the local from there to LaGrange. Now, the question of whether it is a carload or less than carload, has very little relation to the matter of handling of freights at local stations and the handling of freights between the two terminals of a line. We have had an

investigation made as to the cost of handling freights on way freight trains at intermediate points as compared with through freights, and find the difference to be from seven times to ten times as great on the way train. Of course, the mere cost of handling is only one question and cannot very well be considered when you come to make a tariff of rates, but as af-
136 fecting the value of the service performed for the intermediate station, I think it is entirely fair to consider the difference in the nature of the service performed at LaGrange and the service performed in Atlanta for handling the same class of goods. I believe it is fair and just for the railroads in making up their charges to consider the value of the services as well as other conditions.

Mr. Calloway: Do you remember anything about when the Atlanta & West Point watered their stock?

Mr. Knott: I never heard of any such transactions. I should say from the statement as to the certificates of indebtedness and the liabilities as given by the president this morning, that no such thing as "watering" had taken place, if by that term is meant fictitious stock, since the total indebtedness reported is less than it would cost to rebuild the road.

Com'r. Clements: You stated a while ago your opinion as to the effect on this line of removing the present disparity between LaGrange and Atlanta and these other points, from New Orleans—the rates complained of—by lowering the rate to LaGrange and the other points and by the other method of increasing the rate at Atlanta, in either case that it would hurt the revenues of the road. I think you testified on that point.

Mr. Knott: I do not think I did, but I think I heard Mr. Smith testify as to that.

Com'r. Clements: I did not understand you to go into the figures but generally. I think you did. But perhaps not. Suppose that your rivals between New Orleans and Atlanta as well as the carriers between other competing supply markets and Atlanta should, under a general system or law, do the same thing, make the same sort of adjustment, how would that effect the business of the roads? This testimony relates to this particular line, as I understand it, doing this thing alone and the others not doing it.

Mr. Knott: If I understand your question, the supposition is that the carriers not only from New Orleans but from Louisville and Cincinnati should advance their rates to Atlanta.

Com'r. Clements: Should remove the disparity between the short distance points and the longer ones.

137 Mr. Knott: Well, testimony has been given upon the first assumption that the road would lose the com-

petitive business from New Orleans to Atlanta. In my judgment that would be the result. Assuming for illustration that the Louisville & Nashville did secure an agreement with the New Orleans & Northeastern and its connections to advance the rates from New Orleans to Atlanta so that all intermediate points could be brought up to the basis of the Atlanta rate. That would only be the beginning. The first effect of that would be to stop the movement of traffic between New Orleans and Atlanta. It would be, I think, practically impossible to secure such an agreement on the part of lines leading south from the Ohio river into Atlanta, because that, again, is affected by the conditions which seem to make that impracticable. But let us assume even that is finally secured. Then we would say New Orleans is at no greater advantage in selling at Atlanta than is Louisville, Cincinnati or Chicago or St. Louis. That still does not meet the situation because a very large part of the entire traffic which New Orleans does in Atlanta is sold in competition with shipments from the east, particularly the matter of sugar syrups and molasses. While the rates may now be so as to concentrate the business in New Orleans, it is entirely possible for Philadelphia and New York to supply Atlanta with sugar. Now, those rates, cannot be controlled by any agreement that may be made by the railroads. The steamers working to Brunswick and Savannah and Charleston are at liberty to make any rates they please and would be glad to get back the business not only from Baltimore but from other points. So finally we come to the point where the railroads could not change the rates to Atlanta, Cincinnati, Louisville, and New Orleans might retire from the business, but Atlanta would still have access to markets regardless of what rates the West Point road might make to Atlanta. It would not make any difference except to cause a little more trouble.

Louisville could not advance the rates on flour and grain to Atlanta. Why? Because it was illustrated last summer—the possibility of shipping all kinds of grain and flour from western markets as Chicago, Indianapolis, etc., from those points either by canal and lake or even by rail lines from the interior points to Baltimore or other Atlantic ports and then reship to Atlanta by less than the rail rates via the Ohio river crossings.

138 And New Orleans ships a great deal of grain into Atlanta during the season of the Texas oats. The result would be were the rates advanced to 24 cents instead of 20 or 26 cents, that those oats would go out through Memphis, Cairo or Louisville, or if all the gateways are to put up the rates, it would go around the circle as it used to. It is within the memory

of many of us here, that the principal movement was via Baltimore.

Then finally the question comes up as to what benefit that would be to the merchant at LaGrange. If I understood the statement made this morning, the reduction in the rate to LaGrange is asked not because the rate in itself is excessive or unreasonable but because it circumscribes the territory in which the merchants at LaGrange can dispose of his merchandise and that he finds it impossible to ship up and down the West Point road and only to a limited extent up and down the Macon & Birmingham road. I suppose that is true. I do not see how it could be otherwise. Say Atlanta, which now has a rate of $1.07, is jerked up to $1.30 and LaGrange, which now has $1.43, is brought down to $1.30 on first class. Then all other points between LaGrange and Atlanta will again be not higher than Atlanta; that is, under the same rule, it follows that Hogansville, Fairburn, etc., must be not higher than that. The result is that the merchants at LaGrange has the same circumscribed territory to dispose of his merchandise as now. Because, as Hogansville has the same rate from New Orleans as the merchants at LaGrange, the merchant at Hogansville is not going to buy of the LaGrange merchant. He may not buy any grain in Atlanta. He would buy all his supplies in New Orleans or in Cincinnati, and to make that adjustment of rates on the West Point railroad, would simply shut Atlanta out from those places and transfer their market for supplies from Atlanta to Baltimore or Louisville or New Orleans. That might apparently benefit all the railroad lines except the West Point railroad although as the railroads beyond Atlanta would continue to get only the same proportion as they do now, it in fact would not help them. Certainly the Atlanta merchant would be hurt and it would not help the LaGrange merchant because he would be in the same relation to Atlanta or rather not in a sufficiently improved relation to Atlanta to enable him to compete. And he would be in the same relation to Hogansville and Palmetto, etc., as now.

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That reduction of 13 cents per hundred pounds is not going to increase the consumption of hats, caps and shoes or any other article of merchandise at those stations. So that to change the basis that is now in effect would be to revolutionize the relation that Atlanta bears to that territory and give an advantage to Louisville and Cincinnati and New Orleans in selling in that territory but would not change the relation between LaGrange and Hogansville, etc.

Mr. Calloway: It would change the relation as between La-

Grange and Hogansville because Hogansville has a less rate now?

Mr. Knott: It might change it to that extent and that might be of some benefit. But it will not change the relation so far as the question of rates controls the traffic. It could not put LaGrange in the position of being a jobbing point for Hogansville or Fairburn or any other point.

Com'r. Clements: Do the carriers from the eastern markets carry to all intermediate points as low as they do to Atlanta?

Mr. Knott: I think not, sir. For instance, my understanding is that the rates from eastern markets to points on the Atlanta & West Point Railroad are higher than the rates from the east to Montgomery, and to points between Augusta and Atlanta the rates are higher than to Atlanta.

Com'r. Clements: Is not the conclusion you stated based upon the assumption that that would not be changed. Suppose the same adjustment took place between New Orleans and Atlanta and Louisville and other Ohio river points and Atlanta—suppose it should take place all around?

Mr. Knott: I intended in my answer to the question to assume that the rates would be changed from the eastern markets on the same basis as from the western markets. Now, for instance, the rates from eastern markets to Atlanta are the same as from the east to Montgomery, and if you are going to apply the rule on business from New Orleans, then I presume, that the westbound rule would apply through Atlanta from the east, say from Baltimore, and then there would have to be the same reductions of rates to these stations—rates would be uniform, would be the same as the Atlanta rate. As I said a while ago, that might prevent the Atlanta merchants from continuing to sell goods at those stations, but would not give the merchant at LaGrange or Hogansville an opportunity of jobbing its immediate neighborhood; they would still have to sell as now.

Mr. Calloway: The jobber at LaGrange could job better than the Atlanta jobber?

Mr. Knott: As the rates are now adjusted, the Atlanta merchant has no advantage whatever over the LaGrange merchant in selling in LaGrange. But so far as the question of rate is concerned, under the present adjustment, the Atlanta merchant has no advantage over the LaGrange merchants in LaGrange, assuming that the rate controls, which, in many cases, of course, does not.

Mr. Baxter: That is all, Mr. Knott. I would like to recall Mr. Smith for a few questions.

GEORGE C. SMITH, recalled:

Mr. Baxter: I understood you to say that you were general manager as well as president of these two companies?

Mr. Smith: Yes, sir.

Mr. Baxter: I will ask you to tell the commission, if you can, what is the average capacity, measured in full loaded freight cars of freight locomotives from Montgomery to Atlanta.

Mr. Smith: It differs on different divisions of the road. We haul as high as 34 or 35 cars on certain parts of the road; on other parts 24 cars; possibly thirty cars would be a fair average.

Mr. Baxter: That is the capacity of your locomotives?

Mr. Smith: Yes, sir.

Mr. Baxter: Now what is the average number of loaded cars actually hauled in your freight trains from Montgomery to Atlanta?

Mr. Smith: It is about twenty on the West Point road and fourteen on the Western Railway.

Mr. Baxter: What is the average number of empty freight cars in your freight trains from Montgomery to Atlanta?

Mr. Smith: It is about six on the Western and seven on the West Point.

Mr. Baxter: Your Honor, that closes the defendants' case.

Cross Examination.

Mr. Calloway: Do not you get a better rate out of LaGrange than any other station? Is not the West Point's proportion out of LaGrange rates better than any other station. I do not care which way it comes from? You get the full local out of LaGrange?

141 Mr. Smith: Our traffic manager can answer you more definitely as to that than I can.

Mr. Calloway: I suppose you do not know anything about that double stock. Of course it was not watered, but they had earned it over the regular dividends and they issued debentures for one hundred dollars and made the stockholders a present of it. I have seen the certificate myself.

Mr. Smith: That matter has been discussed several times during this investigation. While I do not pretend to know the history of the transaction at the time, I understand that this road has never kept an improvement account. It was originally built with iron rails and improved from year to year until it has become much more valuable intrinsically than at the time of its original construction. No capital stock has been issued during the many years in which the road has been improved, the old rails being removed and heavier rails substituted, the old equip-

ment having been worn out and replaced by heavier equi
ments; iron bridges constructed in place of the wooden bridge
Undoubtedly the value of the road at the time of the issue of th
debentures was very much in excess of the value of the road o
iginally. There is nothing surprising to my mind that th
stockholders should have reimbursed themselves for the adde
value of the road, and that appears to have been the manner
procedure. The capitalization as it now stands, considering th
character of the road and its facilities is not excessive as com
pared with other lines. In fact, while the average of the road
or the average capitalization of all the roads is $63,000, th
capitalization of the Atlanta & West Point is only $28,00
including the debentures. Considering the physical conditio
of the road and its favorable location and all the points it reache
I see no reason to assume that there is any fictitious capitaliz
tion of the company.

Mr. Calloway: I say that those improvements and those ne
rails, etc., have come out of the profits, which shows you a
getting enough profit out of the rates to do that and pay six
eight per cent. interest.

Mr. Smith: The road has never exceeded the legal rat
and the added value is due to the economy, etc., in conducti
the property, and it might properly be returned to the stoc
holders as representing that added value. That
142 not the subject of criticism in general railroad pra
tice. Those are simply my views of that matter.

Com'r Clements: Is that all?

Mr. Baxter: Yes, sir.

Com'r Clements: What do you wish to do further in this ca
in the way of argument?

Mr. Baxter: I think the questions are all familiar to th
Commission and I would like to get a copy of the testimon
There are some proposed findings of fact which I would li
to have found, but I can not do that until I get a copy of t
testimony.

(It was agreed between the parties that thirty days after
ceipt of copy of the testimony should be allowed for submitti
such suggestions as are desired.)

(The taking of testimony in this case was completed
3 p. m.)

Exhibits hereto follow:

SOUTHERN STATES FREIGHT ASSOCIATION. EXHIBIT NO. 1.

Classified Statement of Tonnage from and via New Orleans, La., via Line named to Atlanta, Ga., during the year ended March 31, 1896.

Route via	Packing House Products	Corn	Wheat	Oats	Other Grain, Hay and Malt	Milled Products of Grain	Agricultural Implements, Vehicles, Machinery and Furniture	Stoves and Hollow-ware Special Iron Articles, except Railroad Bridge Iron	Railroad Track, Material C. L., Bridge Iron C. L., Stone C. L., Brick C. L., Cement C. L., Salt C. L., Fertilizers C L	Miscellaneous Merchandise	Total
L. & N. R. R.	200			921,900	31,300		34,400		951,600	13,332,700	15,272,100
I. C. R. R.				746,300			100		250,000	2,049,600	3,046,000
N. O. & N. E. R. R.				337,500	20,000	40,000	400	2,700		3,507,700	3,908,300
Total	200			2,005,700	51,300	40,000	34,900	2,700	1,201,600	18,890,000	22,226,400

SOUTHERN STATES FREIGHT ASSOCIATION. EXHIBIT NO. 2.

Classified Statement of Tonnage from Points on and beyond the Ohio and Mississippi Rivers and from and via Lexington, Ky., and from Nashville, Tenn., Johnsonville, Tenn., and Florence, Sheffield and Riverton, Ala., to Atlanta, Ga., during periods named:

During the year ended	Packing House Products	Corn	Wheat	Oats	Other Grain, Hay and Malt	Milled Products of Grain	Agricultural Implements, Vehicles, Machinery and Furniture	Stoves and Hollow-ware Special Iron Articles, except Railroad Bridge Iron	Railroad Track, Material C. L., Bridge Iron C. L., Stone C. L., Brick C. L., Cement C. L., Salt C. L., Fertilizers C L	Miscellaneous Merchandise	Total
March 31, 1893	30,946,700	7,451,500	470,400	19,727,100	25,549,600	55,493,900	4,597,000	8,689,400	23,211,600	74,080,500	249,217,700
March 31, 1894	25,892,500	18,010,300	352,000	17,458,100	19,223,200	48,960,900	7,065,800	8,760,900	13,764,000	71,938,700	231,426,400
March 31, 1895	26,793,600	16,187,400	8,600	14,486,000	19,316,400	43,478,100	3,479,900	8,345,000	12,434,900	69,390,400	213,920,300
March 31, 1896	28,677,200	1,320,300	388,900	21,372,700	23,619,000	59,532,600	6,889,200	14,341,400	16,719,300	102,061,200	274,921,800
Total	112,310,000	42,969,500	1,219,900	73,043,900	86,708,200	207,465,500	22,031,900	40,136,700	66,129,800	317,470,800	969,486,200

145 EXHIBIT NO. 3.

The Southern States Freight Association.

Statement of tonnage from the Eastern Seabord and interior points in New England, New York, Pennsylvania, Maryland, Delaware and West Virginia to Atlanta, Ga., for the periods named.

During the year ended March 31st, 1893.....	$ 93,710,945
During the year ended March 31st, 1894.....	79,548,512
During the year ended March 31st, 1895.....	78,763,415
During the year ended March 31st, 1896.....	98,707,647
Total.....	$340,730,519

The movement shown during the year ended March 31st, 1895 includes the tonnage via S. A. Line for 5 months (April 1st, to August 31st, 1895, inclusive) only.

The movement shown during the year ended March 31st, 1896, includes the tonnage via the S. A. Line for 9 months (June 1st, '95 to February 29, 1896, inclusive) only.

Statement of Tonnage by Classes and Commodities from New Orleans, La., to Atlanta, Ga., and Local Stations on the A. & W. P. R. R. and the W. Ry. of Ala., for the year ending June 30th, 1895:

	Atlanta	East Point	Fairburn	Palmetto	Newnan	Moreland	Grantville	Hogansville	LaGrange	West Point	Cusseta	Auburn	Loachapoka	Natasuega	Chehaw	Cowles	Shorters
First Class	46	..	..	..	1	..	..	..	...	2	..	1	..	..	..	1	..
Second Class	13	..	..	..	...	..	..	..	...	1	..	..	..	1	1	..	..
Third Class	14	..	..	..	...	..	..	.	...	1	..	..	..	..	..	..	..
Fourth Class	61	..	..	..	...	..	..	..	7	8	..	..	..	..	..	..	1
Fifth Class	167	..	..	..	1	..	..	..	...	...	..	..	..	..	1	..	..
Sixth Class	402	..	..	..	...	..	..	3	6	8	..	..	..	..	2	4	..
Burlaps	53	..	..	..	1	..	..	..	...	6	..	..	..	..	2	5	..
Liquors	30	..	..	..	...	..	..	..	...	...	..	..	..	..	..	..	..
Cement	93	..	..	..	...	..	..	..	...	...	..	..	..	..	..	..	..
California Wine	28	..	..	..	...	..	..	..	1	...	..	..	..	..	..	..	..
Coffee Green	21	..	..	..	1	..	..	..	...	7	..	..	..	..	..	2	..
Bananas	56	..	..	..	...	..	..	..	...	...	..	..	..	..	..	..	..
Cocoa Nuts	18	..	..	..	...	..	..	..	...	...	..	..	..	..	..	..	..
Oranges and Lemons	181	..	..	..	...	..	..	..	...	2	..	..	..	..	..	..	..
Molasses	992	1	6	13	29	6	7	25	17	72	1	3	1	7	9	12	4
Live Stock	23	..	..	..	...	..	..	..	...	...	..	..	..	..	..	..	..
Oats	379	..	..	..	...	..	..	..	26	19	..	..	..	..	..	..	..
Rice	267	..	..	1	1	..	1	1	3	9	..	1	..	..	1	..	1
Salt	172	..	..	..	...	..	..	..	...	...	..	..	..	..	..	..	..
Sugar	3668	1	2	7	14	..	6	2	13	116	1	5	2	12	26	20	7
Vegetables	64	..	..	..	...	..	..	..	...	...	..	..	..	..	..	..	..
Salmon	25	..	..	..	...	..	..	..	...	...	..	..	..	..	..	..	..
Fertilizers	....	..	..	..	140	27	38	15	27	...	..	..	..	..	..	..	..
	6773	2	8	21	188	33	52	46	100	251	2	10	3	21	42	44	13

147 EXHIBIT NO. 5

Income Account.
[For Roads Making Operating Reports.]

Gross earnings from operation—Page 35	474,022.30	
Less operating expenses—Page 45	277,015.75	
		197,006.55
Income from operation		
Deficit		
Dividends on stocks owned—Page 37		
Interest on bonds owned—Page 39		
Miscellaneous income—less expenses—Page 41	2,946.23	
Income from other sources		2,946.23
Total income		199,952.17
Deficit		
Deductions from income:		
Interest on funded debt accrued—Page 23	73,932.00	
Interest on interest-bearing current liabilities accrued, not otherwise provided for		
Interest on real estate mortgages		
Rents paid for lease of road—Page 47, A	15,431.32	
Taxes		
Permanent improvements—Page 29		
Other deductions	4,007.79	
Total deductions from income		93,371.11
Net income		106,581.67
Deficit		
Dividends, 6 per cent., common stock—Page 17	73,932.00	
Dividends, .. per cent, Preferred stock —Page 17		
Other payments from net income		
Total		73,932.00

Surplus from operations of year ending June 30, 1895	32,649.67
Deficit from operations of year ending June 30, 1895	
Surplus on June 30, 1894, [from "General Balance Sheet," 1894 report.]	139,053.08
Deficit on June 30, 1894, [from "General Balance Sheet." 1894 report.]	
Additions for year	
Deductions for year	
Surplus on June 30, 1895, [for entry on "General Balance Sheet," Page 51.]	171,702.75
Deficit on June 30, 1895, [for entry on "General Balance Sheet," Page 49.]	

148 Instructions for Answering Questions on Opposite Page.

There should appear on the opposite page some notation to indicate that the questions asked have not been overlooked. the word "None," may be used for a whole page; or under any column heading; or against any particular item or items, where that word expresses the facts. In other cases, refer by note to this page, as for example, "See page 32," where a brief explanation should be given why specific data called for can not be returned exactly as requested.

This table is to show the income account of roads which are leased to other companies, or otherwise assigned for operation, but which maintain a separate organization for the purpose of distribution of rents received.

The "Instructions" given regarding the "Income Account" of operating roads, page 30, will also apply to this.

Explanatory Remarks.

149 EXHIBIT NO. 6.

Earnings from Operation.

Item.	Total Receipts	Deductions, Account of Repayments, etc.	Actual Earnings.
Passenger			
Passenger revenue	168,761.41		
Less payments			
Tickets redeemed			
Excess fares refunded	85.25		
Other payments			
Total deductions		85.25	
Total Passenger revenue			168,676.16
Mail			46,331.76
Express			8,399.37
Extra baggage and storage			1,764.87
Other items			
Total passenger earnings			225,154.16
Freight:			
Freight revenue	252,465.92		
Less payments			
Overcharge to shippers		6,335.37	
Other repayments			
Total deductions		6,335.37	
Total freight revenue			246,130.55
Stock yard			
Elevators			
Other items			
Total freight earnings.			246,130,55
Total Passenger and freight earnings			471,284.71

Other earnings from operation:	
Switching charge—Balance	571.06
Car mileage—Balance . .	
Hire of equipment—balance...	
Telegraph companies . ..	
Rents from tracks, yards and terminals—Page 41...	
Rents not otherwise provided for..	291.06
Other sources...	1,872.47
Total other earnings	2,737.59
Total gross earnings from operation.. .	474,022.30

150 Instructions for Answering Questions on Opposite Page.

There should appear on the opposite page some notation to indicate that the questions asked have not been overlooked. The word "None," may be used for a whole page; or under any column heading; or against any particular item or items, where that word expresses the facts. In other cases, refer by note to this page, as for example, "See page 36," where a brief explanation should be given why specific data called for can not be returned exactly as requested.

State in table "A" the names of all railway stocks owned, and in table "B," the names of all stocks owned other than railway stocks, whether yielding an income from dividends or not, and the par value of same. For the dividend-paying stocks, give the amount of dividends or income received from the same during the year. The "Grand Total" of income here shown should be carried to "Income Account," page 31 (or 33), after deducting the expenses, if any, attending the same.

Under "Valuation," give the value at which the stocks specified are carried into the "General Balance Sheet," against the item "Stocks Owned," on page 49.

If stocks have been sold during the year covered by this report, any dividends accruing on them during the time they were held, as also the rate of accrual, should be entered on the opposite page, but the par value of the stocks need not be given.

In case any changes in the amount of stocks owned have occurred during the year covered by this report, a full explanation of such changes should be given on page 53.

Explanatory Remarks.

151 EXHIBIT No. 7.

Operating Expenses.

Item.		Amount.
Maintenance of Way and Structures:		
1.	Repairs of roadway	19,306.77
2.	Renewals of rails	3,966.80
3.	Renewals of ties	14,544.90
4.	Repairs and renewals of bridges and culverts	2,678.67
5.	Repairs and renewals of fences, road crossings, signs and cattle guards	383.96
6.	Repairs and renewals of buildings and fixtures	2,418.09
7.	Repairs and renewals of docks and wharves	
8.	Repairs and renewals of telegraph	
9.	Stationery and printing	22.44
10.	Other expenses	
	Total	43,321.63
Maintenance of Equipment:		
11.	Superintendence	3,271.91
12.	Repairs and renewals of locomotives	15,350.79
13.	Repairs and renewals of passenger cars	13,727.62
14.	Repairs and renewals of freight cars	16,352.01
15.	Repairs and renewals of work cars	605.86
16.	Repairs and renewals of marine equipment	
17.	Repairs and renewals of shop machinery and tools	
18.	Stationery and printing	100.82
19.	Other expenses	
	Total	49,409.01
Conducting transportation:		
20.	Superintendence	10,611.54
21.	Engine and roundhouse men	26,143.43
22.	Fuel for locomotives	20,364.84
23.	Water supply for locomotives	1,596.20
24.	Oil, tallow and waste for locomotives	1,066.54
25.	Other supplies for locomotives	174.92
26.	Train service	16,141.55
27.	Train supplies and expenses	4,116.45

28.	Switchmen, flagmen and watchmen	457.75
29.	Telegraph expenses	5,464.75
30.	Station service	38,236.81
31.	Station supplies	2,192.36
32.	Switching charges—Balance	46.81
33.	Car mileage—Balance	7,190.55
34.	Hire of equipment—Balance	739.83
	Total carried forward	134,544.33

152 Instructions for Answering Questions on Opposite Page.

There should appear on the opposite page some notation to indicate that the questions asked have not been overlooked. The word "None," may be used for a whole page; or under any column heading; or against any particular item or items, where that word expresses the facts. In other cases, refer by note to this page, as for example, "See page 44," where a brief explanation should be given why specific data called for can not be returned exactly as requested.

See "Instructions," page 42.

Explanatory Remarks.

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153 EXHIBIT NO. 7.

Operating Expenses—Continued.

Item.		Amount.
Conducting Transportation—Continued.		
	Total brought forward	134,544.33
35.	Loss and damage	2,194.98
36.	Injuries to persons	5,423.74
37.	Clearing wrecks	129.68
38.	Operating marine equipment	
39.	Advertising	846.34
40.	Outside agencies	10,629.22
41.	Commissions	601.14
42.	Stock yards and elevators	
43.	Rents for tracks, yards and terminals—Page 47, B	
44.	Rents of buildings and other property	3,441.00
45.	Stationery and printing	2,646.11
46.	Other expenses	5.22
	Total	160,461.76

General Expenses:		
47.	Salaries of general officers	9,202.77
48.	Salaries of clerks and attendants	6,787.21
49.	General office expenses and supplies	1,516.49
50.	Insurance	2,644.38
51.	Law expenses	478.38
52.	Stationery and printing (general offices)	1,100.21
53	Other expenses	2,093.91
	Total	23,823.35
Recapitulation of Expenses:		
54.	Maintenance of way and structures	43,321.63
55.	Maintenance of equipment	49,409.01
56.	Conducting transportation	160,461.76
57.	General expenses	23,823.35
	Grand total	277,015.75
Percentage of operating expenses to earnings		58.43

154 Instructions for Answering Questions on Opposite Page.

There should appear on the opposite page some notation to indicate that the questions asked have not been overlooked. The word "None" may be used for a whole page, or a distinct table; or under any column heading; or against any particular item or items, where that word expresses the facts. In other cases, refer by note to this page, as for example, "See page 46," where a brief explanation should be given why specific data called for can not be returned exactly as requested.

Table "A:"

State the amount of rents paid for leased roads and designate whether payment is made by payment of interest on guaranteed bonds, by payment of dividends on guaranteed stock, or by cash payment. Carry the total to the "Income Account," page 31 (or 33), under "Deductions from Income."

Table "B:"

State the amount of rents paid for lease of tracks, yards and terminals as called for in the table. Carry the total to "Operating Expenses," page 45.

Explanatory Remarks.

155 EXHIBIT NO. 8.

Employes and Salaries.

Class.	number.	Total Number of days Worked.	Total Yearly Compensation.	Average Daily Compensation.
General officers	4	1,460	9,202.77	6.30
Other officers	4	1,460	5,226.80	3.58
General office clerks	7	2,555	6,787.21	2.66
Station agents	11	4,015	8,280.00	2.06
Other station men	19	6,935	4,950.38	.71
Enginemen	9	3,285	13,731.30	4.18
Firemen	9	3,285	6,179.08	1.88
Conductors	8	2,920	8,631.70	2.96
Other trainmen	20	6,240	7,509.85	1.20
Machinists	9	2,817	8,338.32	2.96
Carpenters	9	2,817	7,605.90	2.70
Other shopmen	35	10,955	13,693.75	1.25
Section foremen	9	3,285	4,320.00	1.31
Other trackmen	40	12,520	8,138.00	.65
Switchmen, flagmen and watchmen				
Telegraph operators and Dispatchers	8	2,966	4,152.40	1.40
Employes—account float-				

156 Instructions for Answering Questions on Opposite Page.

There should appear on the opposite page some notation to indicate that the questions asked have not been overlooked. The word "None," may be used for a whole page; or under any column heading; or against any particular item or items, where that word expresses the facts. In other cases, refer by note to this page, as for example, "See page 60," where a brief explanation should be given why specific data called for can not be returned exactly as requested.

In computing the items "Average distance carried," "Passenger earnings per mile of road," "Average distance haul of one ton," "Freight earnings per mile of road," "Passenger and freight revenue per mile of road," "Passenger and freight earnings per mile of road," "Gross earnings from operation per mile of road," "Operating expenses per mile of road," and "Income from operation per mile of road," it is not necessary to figure more than two places beyond the decimal point; in case the last remainder is equal to or greater than half the divisor, the second figure of the decimal should be increased by one.

ing equipment..	6	2,160	3,564.01	1.65
All other employes and laborers..	16	5,694	8,278.40	1.45
Total (including "general officers")	223	75,369	128,589.87	1.71
Less "general officers" ..	4	1,460	9,202.77	6.30
Total (excluding "general officers")	219	73,909	119,387.10	1.62
Distribution of the above:				
General administration	15	5,475	21,216.78	3.88
Maintenance of way and structures.. ..	49	15,805	12,158.00	.79
Maintenance of equipment..	53	16,589	29,637.97	1.79
Conducting transportation..	106	37,500	65,277.12	1.74
Total (including "general officers")	223	75,369	128,589.87	1.71
Less "general officers" ..	4	1,460	9,202.77	6.30
Total (excluding "general officers")	219	73,909	119,387.10	1.62

In computing the items "Average amount received from each passenger," "Average receipts per passenger per mile," "Passenger earnings per train mile," and the corresponding items called for under "Freight Traffic," also "Gross earnings from operation per train mile," and "Operating expenses per train mile," the amounts should be carefully figured to five places beyond the decimal point, entries of results being made under the proper heading of "Dollars," "Cents," and "Mills." In case the last remainder is equal to or greater than half the divisor, the fifth figure of the decimal should be increased by one.

Make sure that against "Total passenger revenue," "Total passenger earnings," and similar items under "Freight Traffic," are entered the respective amounts returned on page 35 opposite said items; also, in the computation of "Passenger earnings per mile of road," "Passenger earnings per train mile," and the corresponding items under "Freight Traffic," that "Total passenger earnings" and "Total freight earnings," respectively, are used.

In figuring "Passenger earnings per mile of road," "Freight earnings per mile of road," and the five "per mile of road" items

under "Passenger and Freight," the "Total mileage operated" (single track), as returned on page 67 in table "A," should in most cases be used; in case, however, considerable mileage has been brought into operation or dropped from operation during the year, an estimate of the length of line fairly representing the mean of the mileage operated during the twelve months covered by the report may be accepted, but a full statement of the manner in which such estimate is made should be given below under "Explanatory Remarks."

In computing "Passenger earnings per train mile," add 25 per cent of "Miles run by mixed trains" to the number of "Miles run by passenger trains" to obtain the proper divisor; and, similarly, in computing "Freight earnings per train mile," add 75 per cent of "Miles run by mixed trains" to the number of "Miles run by freight trains."

"Miles run by switching trains" may be given according to the method heretofore in use, or such other method as shall be considered most accurate. State upon this page (60) the process pursued in ascertaining mileage of switching trains.

Explanatory Remarks.

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157 EXHIBIT NO. 9.

Passenger and Freight, and Train Mileage.

Item.	Column for Tonnage, Number Passengers, Number Trains, Mileage, Number Cars.	Columns for Revenue and Rates. Dollars.	Cents.	Mills.
Passenger Traffic:				
Number of passengers carried earning revenue . . .	220,425			
Number of passengers carried one mile	7,054,080			
Number of passengers carried one mile per mile of road	81,833			
Average distance carried . . .	32			
Total passenger revenue—Page 35		168,676	16	
Average amount received from each passenger			77	
Average receipts per passenger per mile			02	391

Total passenger earnings—Page 35..		225,154	16	
Passenger earnings per mile of road.....		2,612	00	
Passenger earnings per train mile....			92	995
Freight Traffic:				
Number of tons carried of freight earning revenue—Page 63....	214,905			
Number of tons carried one mile....	14,257,992			
Number of tons carried one mile per mile of road...	165,406			
Average distance haul of one ton....	66			
Total freight revenue — Page 35....		246,130	55	
Average amount received for each ton of freight		1	14	530
Average receipts per ton per mile....			01	726
Total freight earnings — Page 35....		246,130	55	
Freight earnings per mile of road.....		2,855	34	
Freight earnings per train mile....		2	61	788
Passenger and freight				
Passenger and freight revenue—Page 35..		414,806	71	
Passenger and freight revenue per mile of road....		4,814	14	
Passenger and freight earnings—Page 35.....		471,284	71	
Passenger and freight earnings per mile of road....		5,467	34	
Gross earnings from operation—Page 35....		474,022	30	
Gross earnings from operation per mile of road....		5,499	10	
Gross earnings from operation per train mile.....		1	41	022

Operating expenses—Page 45		277,015	75	
Operating expenses per mile of road		3,213	64	
Operating expenses per train mile			82	412
Income from operation—Page 31		197,006	55	
Income from operation per mile of road		2,285	46	
Train Mileage:				
Miles run by passenger trains	242,115			
Miles run by freight trains.	94,019			
Miles run by mixed trains..				
Total mileage trains earning revenue	336,134			
Miles run by switching trains				
Miles run by construction and other trains				
Grand total train mileage				
Mileage of loaded freight cars—North or east and				
Mileage of loaded freight cars—South or West	1,726,132			
Mileage of empty freight cars—North or east and				
Mileage of empty freight cars—South or West	362,421			
Average number of freight cars in train	27.7			
Average number of loaded cars in train	21.2			
Average number of empty cars in train	6.5			
Average number of tons of freight in train				
Average number of tons of freight in each loaded car				

158 Instructions for Answering Questions on Opposite Page.

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This page calls for a statement of the total tonnage of the various commodities mentioned carried by each road, company's material excluded. It will be observed that the table calls for the names of any important commodities which are carried by the roads and which are not specifically provided for in the Form. The object of the second column ("Freight originating on this road") is to enable the Commission to obtain the total movement throughout the country of the commodities named. Each carrier should report in this column the tonnage of all traffic which originates at any and every point on its line. All traffic which is received from rail or water connections directly, whether through elevators or other methods of transfer, and the initial movement of which has been on the line of other carriers, should be given in the next column. Each carrier supplying the data called for by this table should adopt such methods as will prevent the same traffics being reported as originating on more than one line. The second column is intended to show only the initial movement of the traffic.

The percentage should be computed to show what proportion the total tonnage of each commodity bears to the total tonnage of all commodities carried.

Explanatory Remarks.

159 EXHIBIT NO. 10.

Freight Traffic Movement.
(Company's Material Excluded.)

Commodity.	Freight Originating on this Road. Whole Tons.	Freight Received from Connecting Roads and Other Carriers. Whole Tons.	Total Freight Tonnage Whole Tons.
Products of Agriculture.			
Grain	1,534	10,111	11,645
Flour	1,938	6,666	8,604
Other mill products	10,640	3,438	14,078
Hay	538	2,834	3,372
Tobacco	178	2,318	2,496
Cotton	12,179	19,481	31,660
Fruit and vegetables	595	3,184	3,779
Products of Animals.			
Live stock	730	444	1,174
Dressed meats	1,188	2,762	3,950
Other packing house products			
Poultry, game and fish	121	94	215
Wool	17	26	43
Hides and leather	61	192	253
Products of Mines.			
Anthracite coal			
Bituminous coal	353	19,609	19,962
Coke		176	176
Ores	33	114	147
Stone, sand and other like articles	956	16,740	17,696
Products of Forest.			
Lumber	1,736	11,597	13,333
Manufactures.			
Petroleum and other oils	829	1,043	1,872
Sugar	1,046	11,828	12,874
Naval stores	40	6,748	6,788
Iron, pig and bloom		581	581
Iron and steel rails		128	128
Other castings and machinery	230	882	1,112

Bar and sheet metal.....	927	3,527	4,454
Cement, brick and lime.....	156	1,181	1,337
Agricultural implements.....	452	721	1,173
Wagons, carriages, tools, etc..			
Wines, liquors and beers.....	513	672	1,185
Household goods and furniture.	727	998	1,725
Merchandise.....	7,766	11,022	18,788
Miscellaneous:			
Other commodities not mentioned above.....	16,176	14,129	30,305
Total tonnage—Entire line..	61,659	153,246	214,905

160 Instructions for Answering Questions on Opposite Page.

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This page calls for a classified statement of all the train equipment of the company making report. It should be noted that the classification of equipment covers equipment leased as well as equipment owned, but a separate statement of the aggregate number of locomotives and cars leased, with "Number" fitted with Train Brake and "Number" fitted with Automatic Coupler, respectively, is required against the items "Less Locomotives Leased" and "Less Cars Leased." The equipment which should be returned as leased, is that which is considered as owned by Equipment Companies, Car Trusts, or the like, used by the reporting company. It is expected that sums paid toward the purchase of equipment (that is, locomotives or cars) upon contracts with such companies will appear in the "Comparative General Balance Sheet," page 49, as a separate item under "Other Assets."

The aggregate number of "Cars Contributed to Fast Freight Line Service," with "Number" for Train Brake, and "Number" for Automatic Coupler, is called for at the bottom of page, but cars so returned should, also, be distributed among the proper classes of cars "In Freight Service."

In returning equipment fitted with "Automatic Coupler" conforming to the standard adopted by the Master Car Builders' Association, do not enter under "Name" the designation "M.

C. B.," but give the specific name of each coupler of that type in use and the number of equipment fitted with each. Be careful to write clearly and spell correctly the name of each kind or type of "Train Brake" or "Automatic Coupler" in use.

If an operating company includes among its own returns the equipment of its operated line, that fact should be stated below under "Explanatory Remarks."

When equipment is reported by a company not making an operating report, the statement should be made below whether or not such equipment is also reported by the operating company.

Explanatory Remarks.

161 EXHIBIT NO. 11.

Income Account.

(For roads making operating reports.)

Gross Earnings from operation—Page 35	$523,283.15	
Less operating expenses—Page 45	346,059.09	
Income from operation		
Deficit		
Dividends on stocks owned—Page 37		
Interest on bonds owned—Page 39		
Miscellaneous income—less expenses—Page 41	8,669.96	
Income from other sources	8,669.96	
Total income		185,894.02
Deficit		
Deductions from income:		
Interest on funded debt accrued—Page 23	69,435.00	
Interest on interest-bearing current liabilities accrued, not otherwise provided for		
Interest on real estate mortgages		
Rents paid for lease of road—Page 47, A		
Taxes		
Permanent improvements—Page 29, B	23,064.17	

Other deductions.....		
Total deductions from income...		92,499.17
Net income.....		93,394.85
Deficit.....		
Dividends,.. per cent, common stock—Page 17.....	60,000.00	
Dividends,.. per cent, preferred stock —Page 17.....		
Other payments from net income.....		
Total.....		60,000.00
Surplus from operations of year ending June 30, 1895..		33,394.85
Deficit from operations of year ending June 30, 1895..		
Surplus on June 30, 1898, (from "General ballance sheet," 1894 report)		109,069.37
Deficit on June 30, 1898,(from "General balance sheet," 1894 report.)		
		142,464.22
Additions for year.....		
Deductions for year, A. & F. R. R., old account.....	•201.30	201.30
Surplus on June 30, 1895, (for entry on "General balance sheet," Page 51.)..		142,262.92
Deficit on June 30, 1895, (for entry on "General balance sheet," Page 49.).		

162 Instructions for Answering Questions on Opposite Page.

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This table is to show the income account of roads which are leased to other companies, or otherwise assigned for operation, but which maintain a separate organization for the purpose of distribution of rents received.

The "Instructions" given regarding the "Income Account" of operating roads, page 30, will also apply to this.

Explanatory Remarks.

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163 EXHIBIT NO. 12.

Earnings from Operation.

Item.	Total Receipts	Deductions, Account of Repayments, etc.	Actual Earnings.
Passenger:			
Passenger revenue	178,947.32		
Less repayments			
Tickets redeemed			
Excess fares refunded		705.05	
Other repayments			
Total deductions		705.05	
Total passenger revenue			178,242.27
Mail			51,403.68
Express			8,050.01
Extra baggage and storage			2,040.23
Other items			
Total passenger earnings			239,736.19
Freight:			
Freight revenue	282,777.18		
Less repayments			
Overcharge to shippers		7,592.16	
Other repayments			
Total deductions		7592.16	
Total freight revenue			275,185.02

Stock yards	
Elevators	
Other items	
Total freight earnings.	275,185.02
Total passenger and freight earnings.	514,921.21
Other earnings from operation:	
Switching charges—balance	3,314.20
Car mileage—balance	
Hire of equipment—balance	
Telegraph companies	
Rents from tracks, yards and terminals—Page 41	558.84
Rents not otherwise provided for	
Other sources	4,488.90
Total other earnings	8,361.94
Total gross earnings from operation entire line	523,283.15

164 Instructions for Answering Questions on Opposite Page.

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State in table "A" the names of all railway stocks owned, and in table "B," the names of all stocks owned other than railway stocks, whether yielding an income from dividends or not, and the par value of same. For the dividend-paying stocks, give the amount of dividends or income received from the same during the year. The "Grand Total" of income here shown should be carried to "Income account," page 31 (or 33), after deducting the expenses, if any, attending the same.

Under "Valuation," give the value at which the stocks specified are carried into the "General Balance Sheet" against the item "Stocks Owned," on page 49.

If stocks have been sold during the year covered by this report, any dividends accruing on them during the time they were held, as also the rate of accrual, should be entered on the opposite page, but the par value of the stocks need not be given.

In case any changes in the amount of stocks owned have occurred during the year covered by this report, a full explanation of such changes should be given on page 53.

Explanatory Remarks.

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165 EXHIBIT NO. 13.

Operating Expenses.

Item.		Amount.
Maintenance of Way and Structures:		
1.	Repairs of roadway	28,404.27
2.	Renewals of rails	10,203.43
3.	Renewals of ties	22,136.92
4.	Repairs and renewals of bridges and culverts	10,788.73
5.	Repairs and renewals of fences, road crossings, signs, and cattle guards	301.96
6.	Repairs and renewals of buildings and fixtures	3,709.85
7.	Repairs and renewals of docks and wharves	
8.	Repairs and renewals of telegraph	386.27
9.	Stationery and printing	27.96
10.	Other expenses	
	Total	75,959.39
Maintenance of Equipment:		
11.	Superintendence	3,514.49
12.	Repair and renewals of locomotives	16,141.43
13.	Repairs and renewals of passenger cars	17,986.88
14.	Repairs and renewals of freight cars	17,654.23
15.	Repairs and renewals of work cars	626.36
16.	Repairs and renewals of marine equipment.	
17.	Repairs and renewals of shop machinery and tools	2,405.86
18.	Stationery and printing	92.96
19.	Other expenses	
	Total	58,422.21

Conducting Transportation:		
20.	Superintendence	11,230.55
21.	Engine and roundhouse men	31,813.17
22.	Fuel for locomotives	23,968.02
23.	Water supply for locomotives	2,304.54
24.	Oil, tallow and waste for locomotives	828.19
25.	Other supplies for locomotives	230.96
26.	Train service	17,956.54
27.	Train supplies and expenses	4,722.19
28.	Switchmen, flagmen and watchmen	1,009.45
29.	Telegraph expenses	3,131.86
30.	Station service	4,387.07
31.	Station supplies	3,592.82
32.	Switching charges—balance	91.41
33.	Car mileage—balance	8,807.50
34.	Hire of equipment—balance	8,064.90
	Total carried forward	162,199.17

166 Instructions for Answering Questions on Opposite Page.

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See "Instructions," Page 42.

Explanatory Remarks.

167 Operating Expenses—Continued.

EXHIBIT 13.

Item.		Amount.
Conducting Transportation—Continued.		
	Total brought forward	162,199.17
35.	Loss and damage	2,635.74
36.	Injuries to persons	5,104.67
37.	Clearing wrecks	1,245.37
38.	Operating marine equipment	
39.	Advertising	813.27
40.	Outside agencies	6,404.96
41.	Commissions	599.10
42.	Stock yards and elevators	72.95
43.	Rents for tracks, yards and terminals—Page 47. B	
44.	Rents of buildings and other property	1,483.45
45.	Stationery and printing	2,665.51
46.	Other expenses	
	Total	183,224.19
General Expenses:		
47.	Salaries of general officers	10,559.58
48.	Salaries of clerks and attendants	7,219.04
49.	General office expenses and supplies	1,654.11
50.	Insurance	3,976.42
51.	Law expenses	1,098.30
52.	Stationery and printing (general offices)	1,139.41
53.	Other expenses	2,806.44
	Total	28,453.30
Recapitulation of Expenses:		
54.	Maintenance of way and structures	75,959.39
55.	Maintenance of equipment	58,422.21
56.	Conducting transportation	183,224.19
57.	General expenses	28,453.30
	Grand total	346,059.09
Percentage of operating expenses to earnings—entire line		66.13

168 **Instructions for Answering Questions on Opposite Page.**

There should appear on the opposite page some notation to indicate that the questions asked have not been overlooked. The word "None" may be used for a whole page, or a distinct table; or under any column heading; or against any particular item or items, where that word expresses the facts. In other cases, refer by note to this page, as for example, "See page 46," where a brief explanation should be given why specific data called for can not be returned exactly as requested.

Table "A:"

State the amount of rents paid for leased roads and designate whether payment is made by payment of interest on guaranteed bonds, by payment of dividends on guaranteed stock, or by cash payment. Carry the total to the "Income Account," page 31 (or 33), under "Deductions from income."

Table "B:"

State the amount of rents paid for lease of tracks, yards and terminals as called for in the table. Carry the total to "Operating Expenses," page 45.

Explanatory Remarks.

169 EXHIBIT NO. 14.

Employes and Salaries.

Class.	number.	Total Number of days Worked.	Total Yearly Compensation.	Average Daily Compensation.
General officers	4	1460	10,559.58	723
Other officers	4	1460	5,724.00	392
General Office Clerks	8	2920	7,219.04	247
Station Agents	16	5008	12,450.00	249
Other station men	114	41477	31,937.07	77
Enginemen	12	4380	20,717.40	473
Firemen	12	4380	9,329.40	213
Conductors	9	3285	9,690.75	295
Other trainmen	23	7200	8,265.79	115
Machinists	9	2817	8,338.32	296
Carpenters	9	2817	7,605.90	270
Other shopmen	35	10955	13,693.75	125
Section foreman	16	5008	7,920.00	158
Other trackmen	90	28170	19,155.60	68

Switchmen, flagmen and watchmen	3	939	1,009.45	107
Telegraph operators and dispatchers	5	1825	3,131.86	172
Employes — Account floating equipment				
All other employes and laborers	14	5110	10,872.01	213
Total (including "General Officers")	383	129211	187,619.92	145
Less "General Officers"	4	1460	10,559.58	723
Total (excluding "General Officers")	379	127751	177,060.34	138
Distribution of the above:				
General administration	30	10950	34,374.63	314
Maintenance of way and structures	106	33178	27,075.60	82
Maintenance of equipment	53	16589	29,637.97	178
Conducting transportation	194	68494	96,531.72	141
Total (including "General Officers")	383	129211	187,619.92	145
Less "General Officers"	4	1460	10,559.58	723
Total (excluding "General Officers")	379	127751	177,060.34	138
Total (including "General Officers" entire line	383	129211	187,619.92	145

170 Instructions for Answering Questions on Opposite Page.

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In computing the items "Average distance carried," "Passenger earnings per mile of road," "Average distance haul of one ton," "Freight earnings per mile of road," "Passenger and freight revenue per mile of road," "Passenger and freight earn-

ings per mile of road," "Gross earnings from operation per mile of road," "Operating expenses per mile of road," and "Income from operation per mile of road" it is not necessary to figure more than two places beyond the decimal point; in case the last remainder is equal to or greater than half the divisor, the second figure of the decimal should be increased by one.

In computing the items "Average amount received from each passenger," "Average receipts per passenger per mile," "Passenger earnings per train mile," and the corresponding items called for under "Freight traffic," also "Gross earnings from operation per train mile," and "Operating expenses per train mile," the amounts should be carefully figured to five places beyond the decimal point, entries of results being made under the proper heading of "Dollars," "Cents" and "Mills." In case the last remainder is equal to or greater than half the divisor, the fifth figure of the decimal should be increased by one.

Make sure that against "Total passenger revenue," "Total passenger earnings," and similar items under "Freight Traffic," are entered the respective amounts returned on page 35 opposite said items; also, in the computation of "Passenger earnings per mile of road," "Passenger earnings per train mile," and the coresponding items under "Freight Traffic," that "Total passenger earnings" and "Total freight earnings," respectively, are used.

In figuring "Passenger earnings per mile of road," "Freight earnings per mile of road," and the five "per mile or road" items under "Passenger and freight," the "Total mileage operated" (single track), as returned on page 67 in table "A," should in most cases be used; in case, however, considerable mileage has been brought into operation or dropped from operation during the year, an estimate of the length of line fairly representing the mean of the mileage operated during the twelve months covered by the report may be accepted, but a full statement of the manner in which such estimate is made should be given below under "Explanatory remarks."

In computing "Passenger earnings per train mile," add 25 per cent of "Miles run by mixed trains" to the number of "Miles run by passenger trains" to obtain the proper divisor; and, similarly in computing "Freight earnings per train mile," add 75 per cent of "Miles run by mixed trains" to the number of "Miles run by freight trains."

"Miles run by switching trains" may be given according to the method heretofore in use, or such other method as shall be considered most accurate. State upon this page (60) the process pursued in ascertaining mileage of switching trains.

Explanatory Remarks.

FOLD OUT IS TOO LARGE TO BE FILMED

172 Instructions for Answering Questions on Opposite Page.

There should appear on the opposite page some notation to indicate that the questions asked have not been overlooked. The word "None" may be used for a whole page; or under any column heading; or against any particular item or items, where that word expresses the facts. In other cases, refer by note to this page, as for example, "See page 62," where a brief explanation should be given why specific data called for cannot be returned exactly as requested.

This page calls for a statement of the total tonnage of the various commodities mentioned carried by each road, company's material excluded. It will be observed that the table calls for the names of any important commodities which are carried by the roads and which are not specifically provided for in the form. The object of the second column ("Freight originating on this road") is to enable the Commission to obtain the total movement throughout the country of the commodities named. Each carrier should report in this column the tonnage of all traffic which originates at any and every point on its line. All traffic which is received from rail or water connections directly whether through elevators or other methods of transfer, and the initial movement of which has been on the line of other carriers, should be given in the next column. Each carrier supplying the data called for by this table should adopt such methods as will prevent the same traffic's being reported as originating on more than one line. The second column is intended to show only the initial movement of the traffic.

The percentage should be computed to show what proportion the total tonnage of each commodity bears to the total tonnage of all commodities carried.

Explanatory Remarks.

173 EXHIBIT NUMBER 16.

Freight Traffic Movement.
(Company's Material Excluded.)

Commodity.	Freight Originating on this Road.. .. .. .. Whole Tons.	Freight Received from Connecting Roads and Other Carriers.... .. Whole Tons.	Total Freight Tonnage. Whole Tons.
Products of Agriculture—			
Grain	1802	13776	15578
Flour	1742	9463	11205
Other Mill Products	16922	8932	25854
Hay	363	3646	4009
Tobacco	110	2414	2524
Cotton	27638	1320	28958
Fruit and Vegetables	.....	.....	.....
Products of Animals—			
Live Stock	385	863	1248
Dressed Meats	.....	.....	.....
Other Packing-House Products	983	5415	6398
Poultry, Game, and Fish ..	54	297	351
Wool	19	38	57
Hides and Leather	103	138	241
Products of Mines—			
Anthracite Coal	.....	.....	.....
Bituminous Coal	941	53408	54357
Coke	179	826	1005
Ores	1	5	6
Stone, Sand and other like articles	24652	17502	42154
Products of Forest—			
Lumber	10122	3821	13943

Manufactures—			
Petroleum and other oils ..	424	1190	1614
Sugar	603	15613	16216
Naval Stores	1	1044	1045
Iron, Pig and Bloom	.....	624	624
Iron and Steel Rails	216	883	1099
Other Castings and Machinery	304	1638	1942
Bar and Sheet Metal	827	5500	6327
Cement, Brick and Lime ..	.....	.....	.....
Agricultural Implements ..	329	1076	1405
Wagons, Carriages, Tools, etc., ...	.....	.....	.....
Wines, Liquors and Beers .	352	1316	1668
Household Goods and Furniture	392	1500	1892
Merchandise	9022	16019	25041
Miscellaneous: Other commodities not mentioned above	6370	16749	23119
Total Tonnage	105064	185016	290080

174 Instructions for Answering Questions on Opposite Page.

There should appear on the opposite page some notation to indicate that the questions asked have not been overlooked. The word "None" may be used for a whole page; or under any column heading; or against any particular item or items, where that word expresses the facts. In other cases, refer by note to this page, as for example, "See page 64," where a brief explanation should be given why specific data called for can not be returned exactly as requested.

This page calls for a classified statement of all the train equipment of the company making report. It should be noted that the classification of equipment covers equipment leased as well as equipment owned, but a separate statement of the aggregate number of locomotives and cars leased, with "Number" fitted with train brake, and "Number" fitted with automatic coupler, respectively, is required against the items, "Less Locomotives Leased" and "Less Cars Leased." The equipment which should be returned as leased, is that which is considered as owned by equipment companies, car trusts, or the like, used by the reporting company. It is expected that sums paid toward the purchase

of equipment (that is, locomotives or cars) upon contracts with such companies will appear in the "Comparative General Balance Sheet," page 49, as a separate item under "Other Assets."

The aggregate number of "Cars Contributed to Fast Freight Line Service," with "Number" for train brake, and "Number" for automatic coupler, is called for at the bottom of page, but cars so returned should, also, be distributed among the proper classes of cars "In Freight Service."

In returning equipment fitted with "Automatic Coupler" conforming to the standard adopted by the Master Car Builders' Association, do not enter under "Name" the designation "M. C. B.," but give the specific name of each coupler of that type in use and the number of equipment fitted with each. Be careful to write clearly and spell correctly the name of each kind or type of "Train Brake" or "Automatic Coupler" in use.

If an operating company includes among its own returns the equipment of its operated line, that fact should be stated below under "Explanatory Remarks."

When equipment is reported by a company not making an operating report, the statement should be made below whether or not such equipment is also reported by the operating company.

Explanatory Remarks.

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175 EXHIBIT NO. 17.

Section 1130, Code of Alabama, Volume 1. Civil, 1886. Page 295. Ib. Sec. 15, as amended, Febr'y 23, 1883, P. 177.

1130. Revision of Railroad Tariffs—It is the duty of the Railroad Commissioners to consider and carefully revise all tariffs of charges for transportation made by any person or corporation owning or operating a railroad in this state; and if, in their judgment, any such charge is more than just compensation for the service for which it is proposed to be made, or amounts to unjust discrimination against any person, locality, or corporation, they shall notify the party making the same of the charges necessary to reduce the rate to just compensation, or so as to avoid unjust discrimination; and when such charges are made, or when none are deemed proper and expedient, they shall append to the tariff of charges a certificate of their approval; and they shall exercise a watchful and careful supervision over all tariffs and their operation, and revise the same, from time to time, as justice to the public and the railroads may require, and increase or reduce any of the rates, as experience and busi-

ness operations may show to be just; but in revising any tariff, the commissioners shall take into consideration the nature of the service to be performed, the entire business of the railroad, and its earnings from passengers and other traffic, and so revise the same as to allow a fair and just return on the value of the railroad, its appurtenances and equipments.

No. 10. (Copy.)

No. — Statement. Form 23.

The Western Railway of Alabama & Atlanta & West Point R. R. Co.

Office of Traffic Manager, Montgomery, Ala.

Nov. 6, 1896.

Rates of Freight Taking Effect ....., 189..

From New Orleans, Louisiana, To	Per 100 Pounds. Classes. 1	2	3	4	5	6	A	B	C	D	E	H	F	Per Bbl..... Sugar	Per 100 Pounds. Inquiry
Montgomery Ala. . . .	94	88	74	59	48	37	24	27	20	16	44	29	32	18	7
Atlanta, Georgia. . . .	103	88	77	64	52	42	24	31	24	20	44	49	40	21	14
LaGrange, Georgia. . .	143	124	109	93	74	59	41	47	33.5	29	66	74	59	38	6
Hogansville, Georgia. .	139	121	107	90	73	57	39	46	33	28.5	65	75	58	36	
Newnan, Georgia. . . .	133	114	101	86	70	55	37	44	32	27.5	62	71	56.5	34	
Palmetto, Georgia. . . .	127	110	97	82	66	54	36	43	31.5	26.5	58	67	55	33	
Fairburn, Georgia. . . .	125	108	95	79	65	53	35	42	31	26	57	64	54	32	
From Montgomery, Ala., To West Point, Ga. . . .	55	47	42	32	26	21	21	23	21	17	29	32	40	21	

From West Point, Ga., To															
LaGrange, Ga.	20	18	17	13	12	10	10	10	6	5.5	12	13	12.5	10:	
Hogansville, Ga. . . .	26	23	21	19	15	12	12	12	7.5	6.5	15	19	15	12:	
Newnan, Ga.	33	30	28	24	20	14	14	14	9	8	20	24	17.5	14:	11
Palmetto, Ga.	36	33	30	26	21	15	15	15	9	8.5	21	26	18	15:	
Fairburn, Ga.	40	36	32	29	22	17	17	17	9.5	9	22	29	19	17:	

From Atlanta, Georgia, To															
Fairburn, Ga.	22	20	18	15	13	11	11	11	7	6	13	15	14	11:	
Palmetto, Ga.	24	22	20	18	14	12	12	12	7.5	6.5	14	18	15	12:	
Newnan, Ga.	30	26	24	22	18	13	13	13	8	7.5	18	22	16.5	13:	15
Hogansville, Ga. . . .	36	33	30	26	21	15	15	15	9	8.5	21	26	18	15:	
LaGrange, Ga.	40	36	32	29	22	17	17	17	95	9	22	29	19	17:	

EXHIBIT 19. (2.)

No. — Statement. Form 707.

The Western Railway of Alabama and the Atlanta & West Point R. R. Co.

Office of Traffic Manager.

Montgomery, Ala., Nov. 6th, 1896.

Rates of Freight Taking Effect, ..., 189..

Per 100 Pounds.

From New Orleans, La., To	Classes.														Per Bbl...	Per 100 lbs. Sugar. ....
	1	2	3	4	5	6	A	B	C	D	E	H	F			
L. & N. to Montgomery.	66.5	56.8	49.7	41.3	33.6	27.1	15.5	20	15.5	12.9	28.4	31.7	25.8	13.6		
Beyond.	36.5	31.2	27.3	22.7	18.4	14.9	8.5	11	8.5	7.1	15.6	17.3	14.2	7.4		
Atlanta, Ga., total.. ...103		88	77	64	52	42	24	31	24	20	44	49	40	21		
A. & W. P. & W. Rys. revenue per ton per mile of their proportion of the New Orleans to Atlanta Rate.	4.17	3.56	3.12	2.6	2.1	1.7	0.97	1.25	0.97	0.8	1.78	1.98	1.62	0.85		
A. & W. P. & W. Rys. revenue per ton per mile of the rates from Montgomery to Atlanta..	10.74	10	8.5	6.74	5.5	4.23	2.74	3.08	2.3	1.8	5	3.31	3.7	2.06		

178 ACT CREATING THE RAILROAD COMMISSION OF GEORGIA AND ACTS AMENDATORY THEREOF,

With Extracts from the Constitution of the State of Georgia and Laws of the State Relating to Railroads.

179 The following is the law under which the Railroad Commission was created, being Act No. 269, Part 1, Title 12 of the Acts and Resolutions of the General Assembly of the State of Georgia, 1878-1879:

AN ACT

To provide for the regulation of railroad freight and passenger tariffs, and the location and building of passenger and freight depots in this State; to prevent unjust discrimination in the rates charged for transportation of passengers and freights, and to prohibit railroad companies, corporations, and lessees in this State from charging other than just and reasonable rates, and to punish the same, and to prescribe a mode of procedure and rules of evidence in relation thereto, and to appoint Commissioners, and to prescribe their powers and duties in relation to the same.

Whereas, It is made the duty of the General Assembly, in article 4, paragraph 2, and section 1 of the Constitution, to pass laws, from time to time, to regulate freight and passenger tariffs; to prohibit unjust discrimination on the various railroads of this State, and to prohibit railroads from charging other than just and reasonable rates, and enforce the same by adequate penalties; therefore,

Commissioners, appointment, term and salary.

Section 1. Be it enacted by the General Assembly of Georgia, That there shall be three Commissioners, appointed by the Governor, with the advice and consent of the Senate, to carry out the provisions of this Act, of whom one shall

be of experience in the law, and one of experience in the railway business. After the expiration of the terms of the office of the Commissioners first appointed, the term of office of successors shall be six years; but, at the first appointment, one Commissioner shall be appointed for two years, one for four years, and one for six years. The salary of each Commissioner shall be twenty-five hundred dollars, to be paid from the Treasury of the State. Any Commissioner may be suspended from office by order of the Governor, who shall report the fact of such suspension, and the reasons therefor, to the next General Assembly, and if a majority of each branch of the General Assembly declare that said Commissioner shall be removed from office, his term of office shall expire. The Governor shall have the same power to fill vacancies in the office of Commissioner as to fill other vacancies, and if, for any reason, said Commissioners are not appointed during the present session of the General Assembly, the Governor shall appoint them thereafter, and report to the next Senate, but the time until then shall not be counted as part of the term of office of said Commissioners, respectively, as herein provided. Said Commissioners shall take an oath of office, to be framed by the Governor, and shall not, jointly or severally, or in any way, be the holders of any railroad stock or bonds, or be the agent or employee of any railroad company, or have any interest in any way in any railroad, and shall so continue during the term of office; and in case any Commissioner becomes disqualified in any way, he shall at once remove the disqualifications or resign, and on failure so to do, he must be suspended from office by the Governor, and dealt with as hereinafter provided. In any case of suspension the Governor may fill the vacancy until the suspended Commissioner is restored or removed.

Location of office, employment of Secretary, expenses, etc.

Sec. II. That said Commissioners shall be furnished with an office, necessary furniture and stationery, and may employ a Secretary or Clerk at a salary of twelve hundred dollars at the expense of the State. The office of said Commis-

sioners shall be kept in Atlanta, and all sums of money authorized to be paid by this Act out of the State Treasury shall be paid only on the order of the governor; Provided, That the total sum to be expended by said Commissioners for office rent, furniture and stationery shall, in no case, exceed the sum of eight hundred ($800) dollars, or so much thereof as may be necessary per annum.

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Extortion by railroads forbidden.

Sec. III. That from and after the passage of this Act, if any railroad corporation, organized or doing business in this State, under any Act of incorporation or general law of this State now in force, or which may hereafter be enacted, or any railroad corporation organized, or which may hereafter be organized under the laws of any other State, and doing business in this State, shall charge, collect, demand or receive more than a fair and reasonable rate of toll or compensation for the transportation of passengers or freight of any description, or for the use and transportation of any railroad car upon its track, or any of its branches thereof, or upon any railroad within this State which it has the right, license, or permission to use, operate or control, the same shall be deemed guilty of extortion, and, upon conviction thereof, shall be dealt with as hereinafter provided.

Unjust discrimination forbidden.

Sec. IV. That if any railroad corporation as aforesaid shall make any unjust discrimination in its rates or charges of toll or compensation for the transportation of passengers or freights of any description, or for the use and transportation of any railroad car upon said road, or upon any of the branches thereof, or upon any railroads connected therewith, which it has the right, license or permission to operate, control or use, within this State, the same shall be deemed guilty of having violated the provisions of this Act, and, upon conviction thereof, shall be dealt with as hereinafter provided.

Duty of commissioners.

Sec. V. That the Commissioners appointed, as hereinbefore provided, shall, as provided in the next section of this Act, make reasonable and just rates of freight and passenger tariffs, to be observed by all railroad companies doing

business in this State on the railroads thereof; shall make reasonable and just rules and regulations, to be observed by all railroad companies doing business in this State, as to charges at any and all points, for the necessary handling and delivering of freights; shall make such just and reasonable rules and regulations as may be necessary for preventing unjust discriminations in the transportations of freight and passengers on the railroads in this State; shall have the power to make just and reasonable joint rates for all connecting railroads doing business in this State, as to all traffic or business passing from one of said roads to another, and to require the location of such depots, and the establishment of such freight and passenger buildings as the condition of the road, the safety of freight and the public comfort may require; Provided, however, That before applying joint rates to roads that are not under the management and control of one and the same company, the Commissioners shall give thirty days' notice to said roads of the joint rate contemplated, and of its division between said roads, and give hearing to roads desiring to object to the same; shall make reasonable and just rates of charges for use of railroad cars carrying any and all kinds of freight and passengers on said railroad, no matter by whom owned or carried; and shall make just and reasonable rules and regulations, to be observed by said railroad companies on said railroads, to prevent the giving or paying of any rebate or bonus, directly or indirectly, and from misleading or deceiving the public in any manner as to the real rates charged for freight and passengers; Provided, That nothing in this Act contained shall be taken as in any way abridging or controlling the rates for freight charged by any railroad company in this State for carrying freight which comes from or goes beyond the boundaries of the State, and on which freight less than local rates on any railroad carrying the same are charged by such railroad, but said railroad companies shall possess the

181 same power and right to charge such rates for carrying such freights as they

possessed before the passage of this Act; and said Commissioners shall have full power by rules and regulations to designate and fix the difference in rates of freight and passenger transportation, to be allowed for longer and shorter distances on the same or different railroads, and to ascertain what shall be the limits of longer and shorter distances.

Commissioners shall make schedule of rates, publish same, etc.

Sec. VI. That the said Railroad Commissioners are hereby authorized and required to make for each of the railroad corporations doing business in this State, as soon as practicable, a schedule of just and reasonable rates of charges for the transportation of passengers and freights and cars on each of said railroads; and said schedule shall, in suits brought against any such railroad corporations wherein is involved the charges of any such railroad corporation for the transportation of any passenger or freight or cars, or unjust discrimination in relation thereto, be deemed and taken in all courts of this State as sufficient evidence that the rates therein fixed are just and reasonable rates of charges for the transportation of passengers and freights and cars upon the railroads; and said Commissioners shall from time to time, and as often as circumstances may require, change and revise said schedules. [When any schedule shall have been made or revised, as aforesaid, it shall be the duty of the Commissioners to cause publication thereof to be made for one time in some public newspaper published in the cities of Atlanta, Augusta, Albany, Savannah, Macon, Rome, Athens, Americus and Columbus, in this State, at a rate not to exceed fifty cents per square of usual advertising space when less than a column is occupied, or more than twelve dollars per column when as much space as a column or more is occupied, by inserting said schedule or change of any schedule, so that said newspaper shall not charge for such advertising any rate in excess of that allowed for county legal advertising; and after the same shall be so published, it shall be the duty of all such railroad companies to post at all their respective stations, in a conspicuous place, a copy of said schedule for the

protection of the people; Provided, That the schedule thus prepared and published, as aforesaid, for all the railroad companies now organized under the laws of this State, or that may be organized at the time of said publication. Provided, That when any rate or change is made by the Commissioners that affects only one road or roads in a particular locality, the insertion need only be made in the paper published in one of the cities named nearest where the change is made (Act 27th September, 1883); Provided, That the schedules thus prepared shall not be taken as evidence, as herein provided, until schedules shall have been prepared and published as aforesaid, for all the railroad companies now organized under the laws of this State, or that may be organized at the time of said publication. All such schedules, purporting to be printed and published as aforesaid, shall be received and held in all such suits as prima facie the schedules of said Commissioners, without further proof than the production of the schedules desired to be used as evidence, with a certificate of the Railroad Commission that the same is a true copy of the schedule prepared by them for the railroad company or corporation therein named, and that the same has been duly published as required by law.]

Jurisdiction and power of Commissioners.

Sec. VII. That it shall be the duty of said Commissioners to investigate the books and papers of all the railroad companies doing business in this State, to ascertain if the rules and regulations aforesaid have been complied with, and to make personal visitation of railroad offices, stations, and other places of business for the purpose of examination, and to make rules and regulations concerning such examination, which rules and regulations shall be observed and obeyed as other rules and regulations aforesaid; said Commissioners shall also have full power and authority to examine all agents and employes of said railroad companies, and other persons, under oath or otherwise, in order to procure the necessary information to make just and reasonable rates of freight and passenger tariffs, and to ascertain if

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such rules and regulations are observed or violated, and to make necessary and proper rules and regulations concerning such examinations, and which rules and regulations herein provided for shall be obeyed and enforced as all other rules and regulations provided for in this Act.

Power of Commissioners over contracts between railroads.

Sec. VIII. That all contracts and agreements between railroad companies doing business in this State, as to rates of freight and passenger tariffs, shall be submitted to said Commissioners for inspection and correction, that it may be seen whether or not they are a violation of law or of the provisions of the Constitution, or of this Act, or of the rules and regulations of said Commissioners; and all arrangements and agreements whatever as to the division of earnings of any kind of competing railroad companies doing business in this State, shall be submitted to said Commissioners for inspection and approval, in so far as they affect rules and regulations made by said commissioners to secure to all persons doing business with said companies just and reasonable rates of freight and passenger tariffs; and said Commissioners may make such rules and regulations as to such contracts and agreements as may then be deemed necessary and proper, and any such agreement, not approved by such Commissioners, or by virtue of which rates shall be charged exceeding the rates fixed for freight and passengers, shall be deemed, held and taken to be violations of article 4, section 1, paragraph 4 of the Constitution, and shall be illegal and void.

Penalty for violation of rules.

Sec. IX. That if any railroad company doing business in this State, by its agents or employes, shall be guilty of a violation of the rules and regulations provided and prescribed by said Commissioners; and if, after due notice of such violation given to the principal officer thereof, ample and full recompense for the wrong or injury done thereby to any person or corporation, as may be directed by the Commissioners, shall not be made within thirty days from the time of such notice, such company shall incur a penalty for each offence of not less than one thousand dollars, nor more than five thousand dollars, to

be fixed by the presiding judge. An action for the recovery of such penalty shall lie in any county in the State where such violation has occurred, or wrong has been perpetrated, and shall be in the name of the State of Georgia. The Comissioners shall institute such action through the Attorney-General or Solicitor-General whose fees shall be the same as now provided by law.

Injuries resulting from violation of rules.

Sec. X. That if any railroad company doing business in this State shall, in violation of any rule or regulation provided by the Commissioners aforesaid, inflict any wrong or injury on any person, such person shall have a right of action and recovery for such wrong or injury in the county where the same was done, in any court having jurisdiction thereof, and the damages to be recovered shall be the same as in actions between individuals, except that, in cases of wilful violation of law, such railroad companies shall be liable to exemplary damages; Provided, That all suits under this Act shall be brought within twelve months after the commission of the alleged wrong or injury.

Rules of evidence.

Sec. XI. That in all cases under the provision of this Act the rules of evidence shall be the same as in civil actions, except as hereinbefore otherwise provided. All fines recovered under the provisions of this Act shall be paid into the State Treasury, to be used for such purposes as the General Assembly may provide. The remedies hereby given the persons injured shall be regarded as cumulative to the remedies now given by law against railroad corporations, and this Act shall not be construed as repealing any statute giving such remedies.

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Meaning of terms.

Sec. XII. That the terms "railroad corporation," or "railroad company," contained in this Act shall be deemed and taken to mean all corporations, companies or individuals now owning or operating, or which may hereafter own or operate any railroad, in whole or in part, in this State, and the provisions of this Act shall apply to all persons, firms and companies, and to all associations of persons, whether incorporated or

otherwise, that shall do business as common carriers upon any of the lines of railroad in this State (street railways excepted), the same as to railroad corporations hereinbefore mentioned.

Duplicate freight receipts.

Sec. XIII. That all railroad companies in this State shall, on demand, issue duplicate freight receipts to shippers, in which shall be stated the class or classes of freight shipped, the freight charges over the road giving the receipt, and so far as practicable shall state the freight charges over other roads that carry such freight. When the consignee presents the railroad receipt to the agent of the railroad that delivers such freight, such agent shall deliver the article shipped upon payment of the rate charged for the class of freights mentioned in the receipt. If any railroad company shall violate this provision of the statute, such railroad company shall incur a penalty to be fixed and collected as provided in section nine of this Act.

Reports of Commissioners.

Sec. XIV. That it shall be the duty of the Commissioners herein provided for to make to the Governor annual reports of the transactions of their office, and to recommend, from time to time, such legislation as they may deem advisable under the provisions of this Act.

Power of Commissioners over witnesses.

Sec. XV. That said railroad Commissioners, in making any examination for the purpose of obtaining information pursuant to this Act, shall have power to issue subpoenas for the attendance of witnesses, by such rules as they may prescribe. And said witnesses shall receive for such attendance two dollars per day, and five cents per mile, traveled by the nearest practicable route in going to and returning from the place of meeting of said Commissioners, to be ordered paid by the Governor upon presentation of subpoenas, sworn to by the witnesses, as to the number of days served and miles traveled, before the Clerk of said Commissioners, who is hereby authorized to administer oaths. In case any person shall wilfully fail or refuse to obey such subpoena, it shall be the duty of the Judge of the Superior Court of any county, upon application of said Commissioners, to issue an attachment for such witness, and compel him to attend

before the Commissioners and give his testimony upon such matters as shall be lawfully required by such Commissioners, and said court shall have the power to punish for contempt, as in other cases of refusal to obey the process and order of such court.

Railroad officers to report to Commissioners.

Sec. XVI. That every officer, agent or employe of any railroad company who shall wilfully neglect or refuse to make and furnish any report required by the Commissioners, as necessary to the purpose of this Act, or who shall wilfully and unlawfully hinder, delay or obstruct said Commissioners in the discharge of the duties hereby imposed upon them, shall forfeit and pay a sum of not less than one hundred, nor more than five thousand dollars, for each offence, to be recovered in an action of debt in the name of the State.

Sec. XVII. That all laws militating against this Act are hereby repealed.

Approved October 14, 1879.

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184 AN ACT

To enlarge the powers of the Railroad Commission of Georgia, to prescribe for them additional duties, and for other purposes.

Duty to investigate through rates.

Section 1. Be it enacted by the General Assembly of the State of Georgia, That from and after the passage of this Act, it shall be the duty of the Railroad Commission of the State of Georgia to investigate thoroughly all through freight rates from points out of Georgia to points in Georgia, both those now fixed and those that may hereafter be fixed.

Shall call attention of railroad officials to disriminations.

Sec. 2. Be it further enacted, That whenever the Railroad Commission of Georgia finds that a through rate, charged into or out of Georgia, is, in their opinion, excessive or unreasonable, or discriminating in its nature, it shall be the duty of the Railroad Commission to call the attention of the railroad officials in Georgia to the fact, and to urge upon them the propriety of changing such rate or rates.

Shall appeal to Interstate Commission.

Sec. 3. Be it further enacted, That whenever such rates are not changed according to the suggestion of the Railroad Commission, it shall be the duty of the Commission to present the facts, whenever it can legally be done, to the Interstate Commerce Commission, and appeal to it for relief.

Attorney-General required to represent Commission.

Sec. 4. Be it further enacted, That in all work devolving upon the Railroad Commission prescribed by this Act, they shall receive, upon application, the services of the Attorney-General of this State, and he shall also represent them, whenever called upon to do so, before the Interstate Commerce Commission.

Sec. 5. Be it further enacted, That all laws and parts of laws in conflict with this Act, be, and the same are, hereby repealed.

Approved December 18, 1890.

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185 POWER TO BRING SUIT.

AN ACT

To amend Section 719(i) of the Code of Georgia of 1882, and for other purposes.

Section 1. Be it enacted by the General Assembly of the State of Georgia, and it is hereby enacted by the same, That section 719(i) of the Code of Georgia of 1882 be, and the same is, amended by adding thereto the following:

Penalty for violation of rules Amending section IX of original act.

The Commissioners shall have the power, in their discretion, to institute suit without notice for any violation of any of said rules or regulations, whenever, in their opinion, the circumstances authorize it, of which they shall be the sole judges, and after the institution of said suit there shall be no settlement of the same without the consent of the said Commissioners, so that said section, when amended, shall read as follows: If any railroad company doing business in this State by its agents or employes shall be guilty of a violation of the rules and regulations provided and prescribed by said Commis-

sioners, and if, after due notice of such violation given to the principal officer thereof, ample and full recompense for the wrong or injury done thereby to any person or corporation as may be directed by said Commissioners, shall not be made within thirty days from the time of such notice, such company shall incur a penalty for each offence of not less than one thousand dollars nor more than five thousand dollars, to be fixed by the presiding judge. An action for the recovery of such penalty shall be in any county in the State, where such violation has occurred, or wrong has been perpetrated, and shall be in the name of the State of Georgia. The Commissioners shall institute such action through the Attorney-General or Solicitor-General or such other attorney at law of this State as the said Commissioners may appoint, whose fees shall be the same as now provided by law.

Power to institute suit without notice.

The Commissioners shall have the power in their discretion to institute such suit without notice for any violation of said rules and regulations whenever, in their opinion, the circumstances authorize it, of which they shall be the sole judges, and after the institution of said suit there shall be no settlement of the same without the consent of the Commissioners.

Sec. 2. Be it enacted, That all laws or parts of laws in conflict herewith are hereby repealed.

Approved October 16, 1891.

AMENDING TITLE OF ACT.

AN ACT

To amend an Act entitled an Act to provide for the regulation of railroads, freight and passenger tariffs in this State; to prevent unjust discrimination and extortion in the rates charged for transportation of passengers and freights, and to prohibit Railroad Companies, corporations and lessees in this State from charging other than just and reasonable rates, and to punish the

same, and to prescribe a mode of procedure and rules of evidence in relation thereto, and to appoint Commissioners, and to prescribe their powers and duties in relation to the same, approved October 14, 1879.

Section 1. Be it enacted by the General Assembly of this State, and it is hereby
186 enacted by the authority of the same, That the caption of the above recited Act be, and the same is, hereby amended as follows, to-wit:

Caption of Act of Oct., 1879, amended

By inserting "and the location and building of passenger and freight depots."

After the word tariffs in the second line, add the following words: "And the location and building of passenger and freight depots," so that the whole caption of said Act will read as follows:

"An Act to provide for the regulation of railroad freight and passenger tariffs, and the location and building of passenger and freight depots in this State; to prevent unjust discrimination in the rates charged for transportation of passengers and freights, and to prohibit railroad companies, corporations, and lessees in this State from charging other than just and reasonable rates, and to punish the same, and to prescribe a mode of procedure and rules of evidence in relation thereto, and to appoint Commissioners, and to prescribe their powers and duties in relation to the same.

Sec. 2. Be it further enacted, That all laws in conflict with the foregoing be, and the same are, hereby repealed.

Approved August 31, 1891.

INSPECTION OF RAILROAD TRACKS

AN ACT

To give the Railroad Commission of Georgia authority, upon complaint made, to inspect the railroads or any railroad or any part of any railroad in this State; and if found in an unsafe or dangerous condition, to re-

quire the same put and kept in such condition as will render travel over the same safe and expeditious; to provide a penalty for failing to obey the orders of the said Commission, and for other purposes.

Inspection by Commissioners required. If condition unsafe, to be put and kept in safe condition. Reasonable time to be given. Not to affect liability for damages.

Section 1. Be it enacted by the General Assembly of the State of Georgia, That from and after the passage of this Act, the Railroad Commission of this State is hereby empowered and required, upon complaint made, to inspect for themselves, or through an agent, the railroads or any railroad or any part of any railroad in this State, and if the same is found in an unsafe or dangerous condition, to require the same put and kept in such condition as will render travel over the same safe and expeditious; Provided, That reasonable time be given the railroad authorities in which to accomplish the work or repairs that may be required or ordered; Provided, That this Act shall not limit or affect the liability of railroads in cases of damage to person or property.

Penalty for not obeying orders.

Sec. 2. Be it further enacted, That any railroad failing or refusing to obey the orders of said Commission within the time allowed for said work, shall be liable to a penalty of not more than five thousand dollars, to be recovered by a suit brought in the name of the State, in which suit the Attorney-General or Solicitor-General shall represent the State, and his fees shall be the same as now provided by law. Suits shall be brought in the county where the wrong or violation occurs.

Sec. 3. Be it further enacted, That all laws and parts of laws in conflict with this Act be, and the same are, hereby repealed.

Approved October 17, 1891.

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187 STORAGE CHARGES.

AN ACT

To require the Railroad Commission to fix rates

of storage to be charged by Railroad Companies in this State; to prescribe regulations for charging the same, and to prescribe how suit shall be brought for overcharges, and to fix the measure of recovery, and for other purposes.

Commission to fix charges for storage. And when such charges shall begin. Power to vary rates.

Section 1. Be it enacted by the General Assembly of Georgia, That from and after the passage of this Act, power is hereby conferred on the Railroad Commission of Georgia, and they are required to fix and prescribe a schedule of maximum rates and charges for storage of freight made and charged by Railroad Companies doing business in this State, and to fix at what time after the reception of freight at place of destination such charges for storage shall begin, with power to vary the same according to the value and character of the freight stored, the nature of the place of destination and residence of consignee and such other facts as in their judgment should be considered in fixing the same.

Provisions of other acts as to Railroad Commission applicable to them.

Sec. 2. Be it further enacted, That all the provisions of the Act creating said Railroad Commission and Acts Amendatory thereof, prescribing the procedure of said Commission in fixing freight and passenger tariffs, and hearing complaints of carriers and shippers, and of altering and amending said tariffs, shall apply to the subject of fixing and amending rates and charges for storage, as aforesaid.

Sec. 3. Be it further enacted, That no Railroad Company shall make or retain, directly or indirectly, any charge for storage of freight greater than that fixed by the Commission for each particular storage nor shall they discriminate directly or indirectly by means of rebate, or any other device in such charges between persons.

Sec. 4. Be it further enacted, That if any Railroad Company shall violate the provisions of this Act, either by exceeding the rates of storage prescribed, or by discriminating as aforesaid, the person or persons so paying such overcharge, or subjected to such discrimination, shall

have the right to sue for the same in any court of this State having jurisdiction of the claim, and shall have all the remedies and be entitled to recover the same penalties and measure of damages as is prescribed in the case of overcharge of freight rates, upon making like demand as is prescribed in such case, and after like failure to pay the same.

Sec. 5. Be it enacted, That all laws and parts of laws in conflict with this Act be, and the same are hereby repealed.

Approved October 17, 1891.

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188 TO REGULATE EXPRESS AND TELEGRAPH COMPANIES.

AN ACT

To extend the powers of the Railroad Commissioners so as to give them power and authority to regulate charges by Express Companies for transportation; to regulate charges of Telegraph Companies for the transmission of messages by telegraph or charges by persons engaged in the several businesses named herein; to apply to the powers given to said Commissioners, by law, over Railroad Companies, to all companies or persons owning, controlling or operating a line or lines of Express and Telegraph; and make the penalties prescribed against railroads for violating Commissioners' rules apply to the companies and persons herein named, whose line or lines is or are, wholly or in part, in this State, and for other purposes.

Express and Telegraph Companies to be under the control of the Commission. For regula-

Section 1. Be it enacted by the General Assembly of the State of Georgia, That from and after the passage of this Act, all companies or persons owning, controlling or operating or that may hereafter own, control or operate a line or lines of Express or Telegraph, whose line or lines is or are, in whole or in part, in this

tion of prices. Powers over railroads and penalties against them of force as against express and telegraph companies.

State, shall be under the control of the Railroad Commissioners of this State, who shall have full power to regulate the prices to be charged by any company or person or persons owning, controlling or operating any line or lines of Express and Telegraph, for any service performed by such company, person or persons; and all the powers given to the said Commissioners over railroads in this State, and all the penalties prescribed against Railroad Companies or persons operating railroads by existing laws, embraced in sections of the Code of 1882 from Section 719(a) to Section 7 9(p), both inclusive, are hereby declared to be of force against corporations, companies or a person or persons, owning, controlling or operating a line or lines of Express and Telegraph, doing business in this State, whose line or lines is or are, wholly or in part, in this State, so far as said provisions of the Code can be made applicable to any corporation, company, person or persons owning, controlling or operating a line or lines of Express or Telegraph. The said Commissioners shall also have power and authority to require said companies to locate agencies at Railroad Stations.

So far as applicable.

Location of agencies.

Regulation of charges only as to transportation and messages in this State.

Sec. 2. Be it further enacted by the authority aforesaid, That the powers of the Commissioners to regulate charges by corporations, companies and persons herein referred to shall apply only to charges by express, for transportation from one point to another in this State; and messages sent by telegraph from one point to another in this State.

Sec. 3. Be it further enacted, That all laws and parts of laws in conflict with this Act be, and the same are, hereby repealed.

Approved Oct. 21, 1891.

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189 CONSTITUTION.

Article IV.—Section II.

Power to regulate rates and fares.

Paragraph I. The power and authority of regulating railroad freight and passenger tariffs, preventing unjust discriminations, and requiring

reasonable and just rates of freight and passenger tariffs, are hereby conferred upon the General Assembly, whose duty it shall be to pass laws, from time to time, to regulate freight and passenger tariffs, to prohibit unjust discriminations on the various railroads of this State, and prohibit said roads from charging other than just and reasonable rates, and enforce the same by adequate penalties.

Corporations subject to the provisions of this Constitution.

Par. III. The General Assembly shall not remit the forfeiture of the charter of any corporation now existing, nor alter nor amend the same, nor pass any other general or special law for the benefit of said corporation, except upon the condition that such corporation shall thereafter hold its charter subject to the provisions of this Constitution; and every amendment of any charter of any corporation in this State, or any special law for its benefit, accepted thereby, shall operate as a novation of said charter, and shall bring the same under the provisions of this Constitution; Provided, That this section shall not extend to any amendment for the purpose of allowing any existing road to take stock in or aid in the building of any branch road.

Corporations not authorized to buy shares tending to defeat competition.

Par. IV. The General Assembly of this State shall have no power to authorize any corporation to buy shares, or stock, in any other corporation in this State, or elsewhere, or to make any contract, or agreement whatever, with any such corporation, which may have the effect, or be intended to have the effect, to defeat or lessen competition in their respective businesses, or to encourage monopoly; and all such contracts and agreements shall be illegal and void.

No secret rebate allowed.

Par. V. No railroad company shall give, or pay, any rebate, or bonus in the nature thereof, directly or indirectly, or do any act to mislead or deceive the public as to the real rates charged or received for freights or passage; and any such payments shall be illegal and void, and these prohibitions shall be enforced by suitable penalties.

Not intended to impair contracts.

Par. VI. No provisions of this article shall be deemed, held or taken to impair the obligation of any contract heretofore made by the State of Georgia.

Appropriate legislation required.

Par. VII. The General Assembly shall enforce the provisions of this article by appropriate legislation.

190 The following extracts from the laws of the State, on the subject of transportation of passengers and freight by Railroad Companies, are here inserted, as relating to matters of general interest:

A.

Liability of Railroad Companies as carriers.

Railroad companies are common carriers, and liable as such. Code of Georgia, Section 2083.

B.

Time of responsibility.

A common carrier is bound to receive all goods and passengers offered that he is able to and accustomed to carry, upon compliance with such reasonable regulations as he may adopt for his own safety, and the benefit of the public. Code, Section 2070.

C.

What passengers may be refused.

Carriers of passengers may refuse to admit, or may eject from their conveyances, all persons refusing to comply with reasonable regulations, or guilty of improper conduct, or of bad, dissolute, doubtful or suspicious characters. So they may refuse to convey persons seeking to interfere with their own business or interest. Code, Section 2082.

D.

Carrier of passengers.

A carrier of passengers is bound to extraordinary diligence on behalf of himself and his agents, to protect the lives and persons of his passengers. But he is not liable for injuries to the person after having used such diligence. Code, Section 2067.

E.

For baggage.

The carrier of passengers is responsible only for baggage placed in his custody, yet a passenger cannot relieve himself from liability for freight by assuming to take care of his own baggage. Code, Section 2071.

On baggage.

F.

It is the duty of the railroad company to cause their conductors, agents or employes to be provided with checks, so as to check all trunks or separate baggage of passengers from station to station on their roads when required. And it is the duty of the conductor of every passenger train to cause, upon application to him, all trunks and baggage to be checked from any station to any point of destination on their road, or any road running under the control of the company of which he is conductor. The carrier of passengers has a lien on the baggage, not only for its freight, but for the passenger's fare. Code, Sec 2079.

Limit as to value of baggage.

G.

A carrier of passengers may limit the value of the baggage to be taken for the fare paid. In case of loss, however, and though no extra freight has been demanded or paid, the carrier is responsible for the value of the baggage lost, provided the same be only such articles as a traveler for business or pleasure would carry for his or her own use. Code, Section 2081.

Water and light on railroad.

H.

Railroad companies shall keep each passenger car, or in any car in which passengers are transported, an adequate supply of good, pure drinking water, at all hours during the day or night, and lights during the night for the use of passengers. Any conductor or agent of said roads being requested by any passenger to furnish a sufficient suppiy of water to the passengers in each car, and light at night, and shall pass any depot or station without so doing shall be liable to be indicted in any county through which the road runs, and upon conviction shall be punished as prescribed in Section 4310 of the Code. Code, Section 4585.

191

Equal accommodations to all.

I.

All common carriers of passengers for hire in this State shall furnish like and equal accommodations to all persons, without distinction of race, color or previous condition. Code, Section 4586.

J.

Police of railroads.

The conductors of all trains carrying passengers in this State are invested with all the powers, duties and responsibilities of police officers while on duty on their trains. They may eject all persons gambling or guilty of disorderly conduct, or using profane or vulgar language, and may command the assistance of the employes of the company, and of the passengers on the train, to assist in the removal of such offending person or persons. Code, Section 4586(a).

K.

Posting time of delayed trains.

Whenever any passenger train on any railroad in this State shall be more than one-half hour behind its schedule time when it passes a depot at which there is a telegraph operator, and during the hours when such operator is required to be on duty, it shall be the duty of such railroad company to keep posted at every succeeding telegraph station along its line the time such train is behind its schedule; Provided, That such bulletin shall not be required to be posted at any station until one-half hour before the regular schedule time at which such train is to arrive at the station at which such bulletin is required kept. Acts 1884-5, p. 119.

L.

Carriers bound to extraordinary diligence.

The carrier is bound to extraordinary diligence. In cases of loss the presumption is against him, and no excuse avails him unless it was occasioned by the act of God, or the public enemies of the State. Code, Section 2066.

M.

Effect of notice to limit.

A common carrier cannot limit his legal liability by any notice given, either by publication, or by entry on receipts given, or tickets sold. He may make an express contract and will then be governed thereby. Code, Section 2068.

N.

Bound to deliver without unreasonable delay.

A common carrier is bound not only for the safe transportation and delivery of goods, but also that the same be done without unreasonable delay. Code, Section 2073.

O.

Time of responsibility.

The responsibility of the carrier commences with the delivery of the goods, either to himself or his agent, or at the place where he is accustomed or agrees to receive them. It ceases with their delivery at destination according to the direction of the person sending, or according to the custom of the trade. Code, Section 2070.

192 P

Carrier has lien on goods.

The carrier has a lien on the goods for the freight, and may retain possession until it is paid, unless this right is waived by special contract or actual delivery. This lien exists only when the carrier has complied with his contract as to transportation. He can recover pro rata for the actual distance transported when the consignee voluntarily receives the goods at an intermediate point. Code, Section 2077.

Q

Fraud on carrier.

The carrier may require the nature and value of the goods delivered to him to be made known, and any fraudulent acts, sayings or concealment by his customers will release him from liability. Code, Section 2080.

R

Freight lists, how made out.

All freight bills or freight lists charged against or to be collected out of any person for whom a railroad shall carry freight in this state shall contain the items of freight charged in said bills or freight lists by some certain and specific description before they shall be collectible. Code, Section 2078.

S

Receipts of carrier.

Whenever any party shall deliver any freight to any railroad, steamboat or express company in this state for transportation, it shall be the duty of the company, on demand to furnish the party so delivering a good and valid receipt for the same, which receipt shall specify the shipping mark or marks and numbers thereon, and the weight of such article whenever the value can be estimated by weight, and where the value cannot be thus estimated, the receipt shall give

a general description of such article, and shall specify as nearly as practicable the quantity or value thereof, and also the place of destination. A violation of this law constitutes a misdemeanor. Code, Section 4604.

T

Duplicate freight receipts.

All railroad companies in this state shall, on demand, issue duplicate freight receipts to shippers, in which shall be stated the class or classes of freight shipped, the freight charges over the road giving the receipt, and, so far as practicable, shall state the freight charges over other roads that carry such freight. When the consignee presents the railroad receipt to the agent of the road that delivers such freight, such agent shall deliver the article shipped on payment of the rate charged for the class of freights mentioned in the receipts. Code, Section 719(m).

U

Liability of railroads where there are several.

Where there are several connecting railroads under different companies, and the goods are intended to be transported over more than one railroad, each company shall be responsible only to its own terminus, and until delivered to the connecting road; the last company which has received the goods as "in good order" shall be responsible to the consignee for any damage (open or concealed) done to the goods, and such companies shall settle among themselves the question of ultimate liability. Code, Section 2084.

V

Roads required to deliver to and receive cars from connecting roads.

Railroads are required to switch off and deliver to any connecting road of the same gauge all cars consigned to points on or beyond such connecting road. Code, Section 719(q). They are also required, at the terminus or any intermediate point, to receive from the connecting road of the same gauge, when offered, all cars consigned to any point on the road to which the same is offered, and transport said cars to their destination with reasonable diligence. Acts 1882-3, p. 145.

193 W

Weighing by sworn weigher.

When any railroad company shall cause to be weighed cars loaded with freight to be shipped and charged for by the carload, such weighing shall be done by a sworn weigher, such as is provided under the laws of this state for the weighing of cotton, rice and other products. When cars are weighed singly, they shall be uncoupled at both ends and weighed one at a time.

When lumber, etc. laps from one car to an other.

When lumber, or other like article of freight, which from its length laps over from one car to another, shall be transported, the company may cause two or three of such cars so loaded to be weighed together, after being uncoupled from other cars, and the aggregate weight shall be averaged; Provided, in such cases, the shipper shall not pay less freight than the amount of freight due on full carloads. Acts 1882-3, p. 127.

X

Unjust discrimination prohibited.

No railroad corporation organized or doing business in this state shall make any unjust discrimination in its rates or charges of toll for the transportation of passengers, or freight of any description, or for the use and transportation of any railroad car on its said road, or upon any of the branches thereof, or upon any railroads connected therewith, which it has license to operate, control or use. Code, Section 719(d). Nor shall any railroad company discriminate in its rates or tariffs of freight in favor of any line or route connected with it as against any other line or route, nor when a part of its own line is sought to be run in connection with any other route, shall such company discriminate against such connecting line, or in favor of the balance of its own line, but shall have the same rates for all, and shall afford the usual and like customary facilities for interchange of freight to patrons of each and all lines alike. Code, Section 719(s).

The proviso to the first section of the Interstate Commerce Law reads as follows:

Provided, however, that the provisions of this act shall not apply to the transportation of pas-

sengers or property, or to the receiving, delivering, storage or handling of property, wholly within one state, and not shipped to or from a foreign country from or to any state or territory as aforesaid.

194 CARS FOR WHITE AND COLORED PASSENGERS.

An Act.

To require all railroads doing business in this state to furnish equal accommodations and separate cars or compartments for white and colored passengers, to require said companies to furnish comfortable seats, and to sufficiently light and ventilate said cars, to provide for keeping white and colored passengers in their respective cars or compartments, to give conductors and other employes of railroads and conductors of dummy, electric and street cars certain powers and authority over passengers, to comply with the regulations made by said companies under the provisions of this act, to provide a penalty for the violation of the same, and for other purposes.

Equal accommodations in separate cars.

Section 1. Be it enacted by the General Assembly of Georgia, that from and after the passage of this act, all railroads doing business in this state shall be required to furnish equal accommodations, in separate cars, or compartments of cars, for white and colored passengers; provided, that this act shall not apply to sleeping cars.

Employes to assign passengers their cars or compartments.

Sec. 2. Be it further enacted, that all conductors or other employes in charge of such cars, shall be required to assign all passengers to their respective cars or compartments of cars, provided by the said companies under the provisions of this act, and all conductors of dummy, electric and street cars shall be required, and are hereby empowered, to assign all passengers to seats on the cars under their charge, so as to separate the white and colored races as much as practicable, and all conductors and other employes of railroads, and all conductors of dum-

my, electric and street cars shall have, and are hereby invested with, police powers to carry out the provisions of this act.

Penalty of violating provisions of this act.

Sec. 3. Be it further enacted, that any passenger remaining in any car or compartment or seat, other than that to which he may have been assigned, shall be guilty of a misdemeanor, and on conviction thereof shall be punished as prescribed in section 4310 of the Code of 1882. Jurisdiction of such offences shall be in the county in which the same occurs. The conductor and any and all employes on such cars are hereby clothed with power to eject from the train or car any passenger who refuses to remain in such car or compartment or seat as may be assigned to him.

Cars properly divided.

Sec. 4. Be it further enacted, that when a railroad car is divided into compartments, the space set apart or provided for white and colored passengers, respectively, may be proportioned according to the proportion of usual and ordinary travel by each on the road or line on which said cars are used.

White and colored passengers not to occupy same compartments.

Sec. 5. Be it further enacted, that it shall be unlawful for the officers or employes having charge of such railroad cars to allow or permit white and colored passengers to occupy the same car or compartment, and for a violation of this section, any such officer or employe shall be guilty of a misdemeanor, and on conviction thereof shall be punished as is prescribed in section 4310 of the Code of 1882.

Sec. 6. Be it further enacted, that the provisions of this act shall not apply to nurses or servants in attendance on their employers.

Cars to be comfortable, etc.

Sec. 7. Be it further enacted, that all companies operating and using compartment cars or separate cars shall furnish to the passengers comfortable seats, and have such cars well and sufficiently lighted and ventilated, and a failure to so do shall be a misdemeanor, punishable under section 4310 of the Code of 1882.

Sec. 8. Be it further enacted, that all laws and parts of laws in conflict with this act be, and the same are, hereby repealed.

Approved October 21, 1891.

195 TAX AGAINST RAILROAD, EXPRESS, SLEEPING-CAR, AND TELEGRAPH COMPANIES.

No. 32.

An act to authorize the Comptroller-General to appoint one of the Railroad Commissioners of this state to act as arbitrator in certain cases, and for other purposes.

Section I. Be it enacted by the General Assembly of Georgia, that from and after the passage of this act, that in all cases of disagreement between the Comptroller-General and any railroad or express company, sleeping-car companies, and telegraph companies owning property in this state, as to the taxable value of their said property, and where said differences are referred to arbitrators, the Comptroller-General shall appoint any one of the Railroad Commissioners to act as arbitrator for the state, in each case; and it shall be the duty of said Railroad Commissioner, when thus appointed, to perform the duty of arbitrator without any additional compensation to his regular salary.

Sec. II. Be it further enacted, that all laws and parts of laws in conflict with this act are hereby repealed.

Approved December 12, 1894.

EXHIBIT NO. 20.

No. ....

Form 999.

Louisville & Nashville Railroad Co.
Office of General Freight Agent

Rates of Transportation (Classification herewith) taking effect ....., 189..

To
Atlanta, Ga.,

From	Classes.													
	1	2	3	4	5	6	A	B	C	D	E	H	F	
Cincinnati, O.,														Sugar
Louisville, Ky.,														In
Evansville, Ind.,														Bbls.
Cairo, Ills.	107	92	81	68	56	46	28	35	28	24	48	53	48	37

197 EXHIBIT NO. 21.

Circular No. 5.—1886.

Associated Roads of Kentucky, Tennessee and Alabama.

Proceedings of third session of General Freight Agents' Committee, Associate Roads of Kentucky, Tennessee and Alabama, held at Louisville, Ky., March 2 and 3, 1886.

The third meeting of the General Freight Agents' Committee was called to order by the Commissioner at 10:30 A. M., March 2nd. Present, Messrs. Collbran, Culp, Davant, Knox and Waller; and by invitation, Messrs. Hopkins, I. Hardy, Col. Hass, J. H. Drake, L. L. McCleskey and W. A. Turk.

Rates to Carolina territory being the first subject for consideration, Mr. Culp offered the following resolution:

Resolved: That the rates from Chicago to what is known as Richmond and Danville territory, i. e., points east and south of Paint Rock, and east of Atlanta via the Richmond & Danville road, north and east of Augusta via the C. C. & A. R. R., be made upon the lowest combinations, via Paint Rock (using from Ohio river to Paint Rock 75 per cent of the rate from Cincinnati, Jeffersonville, Evansville, and Cairo to Atlanta), via Atlanta, Athens, Augusta, Columbia, Charleston, Richmond, Petersburg, Lynchburg, Strasburg, etc.

That the rates from Cincinnati and Jeffersonville be made as much less than the rates from Chicago as the rates from Cincinnati, Jeffersonville, Evansville, Cairo, etc., to Atlanta territory are less than the rates from Chicago to Atlanta territory, which are:

1	2	3	4	5	6	A	B	C	D	E	H	F
50	40	30	20	15	13	13	14	12	10	15	15	20

That the rates from Evansville and Cairo to points, the rates to which are made through Paint Rock, Strasburg, Lynchburg, Petersburg, or Richmond, be made higher than from Cincinnati and Jeffersonville.

1	2	3	4	5	6	A	B	C	D	E	H	F
10	10	8	8	6	4	2	4	3	4	5	6	6

That the rates from Memphis to points, the rates to which are made through Paint Rock, Strasburg, Lynchburg, Petersburg, or Richmond, be made higher than the rates from Cincinnati and Jeffersonville, the following figures:

1	2	3	4	5	6	A	B	C	D	E	H	F
6	5	4	3	3	3	3	3	3	3	3	3	6

That the rates from other points north of the Ohio river be made by adding arbitraries to the Ohio river to rates
198 so fixed from the Ohio river, and taking that combination which makes the lowest total as the through rate from any given point.

This resolution having been seconded by Mr. Collbran, Mr. Knox moved to amend by adding:

That for classes C, D and F, Cincinnati shall be the basing point instead of Chicago.

The amendment having received the second of Mr. Waller, was put to a vote and lost. The following amendment, proposed by Mr. Knox, and seconded by Mr. Waller, was lost:

That rates from Cairo and Evansville be made the same as from Cincinnati to points on and south of the line Charlotte to Wilmington.

Mr. Davant moved to amend by striking out the third and fourth paragraphs of the original resolution. The amendment was seconded by Mr. Waller, put to a vote, and lost. Upon the original resolution now being put, it was also lost.

The Commissioner decided that the following basis should be used for fixing rates to Carolina territory:

That the rates from Chicago to what is known as Richmond and Danville territory, i. e., points east and south of Paint Rock, and east of Atlanta via the Richmond & Danville road, north and east of Augusta via the C. C. & A. road, be made upon the lowest combinations, via Paint Rock (using from Ohio river to Paint Rock, 75 per cent of the rate from Cincinnati, Jeffersonville, Evansville and Cairo, to Atlanta), via Atlanta, Athens, Augusta, Columbia, Charleston, Richmond, Petersburg, Lynchburg, Strasburg, etc.

That the rates from Cincinnati and Jeffersonville be made as much less than the rates from Chicago as the rates from Cincinnati, Jeffersonville, Evansville, Cairo, etc., to Atlanta territory are less than the rates from Chicago to Atlanta territory, which are:

1	2	3	4	5	6	A	B	C	D	E	H	F
50	40	30	20	15	13	13	14	12	10	15	15	20

That the rates from Evansville and cairo to points, the rates to which are made through Paint Rock, Strasburg, Lynchburg, Petersburg, or Richmond, be made higher than from Cincinnati and Jeffersonville.

1	2	3	4	5	6	A	B	C	D	E	H	F
10	10	8	8	6	4	2	4	3	4	5	6	6

That the rates from East Cairo, Columbus, Hickman and

Memphis, to points, the rates to which are made through Paint Rock, Strasburg, Lynchburg, Petersburg or Richmond, be made two cents less than from Cairo.

That the rates from Nashville to the same points be made the same as from Louisville, except on classes B, C, D and F, which shall be two cents per hundred pounds on B, C and D, and four cents per barrel on F, less than from Louisville.

Committee adjourned at 1:30 P. M.

The entire afternoon session was spent in agreeing with Mr. Haas upon arbitraries to points in his territory.

199 Second day—Morning session.

Committee called to order at 10:40 A. M., all members present.

Action on Carolina rates was deferred until the Commissioner should be furnished by Mr. Haas with his arbitraries.

Mr. Knox having inquired if, for any reason, a member of the committee desire to appeal from the decision of the Commissioner at a time subsequent to the meeting at which such decision was made, such an appeal would be recognized by the Commissioner and the matter referred to the Board of Control, the Commissioner decided that such an appeal could be made subsequently, and would be properly referred if it should be made within a reasonable time after the decision had been rendered.

Recurring again to the subject of rates to Richmond and Danville territory, Mr. Davant offered and Mr. Waller seconded the following:

Resolved: That the rates from Nashville to the territory covered by Mr. Culp's resolution shall not be a less rate per mile than the rates from Louisville.

This resolution occasioned considerable discussion, Mr. Knox holding that neither the Committee nor the Commissioner can change the relative adjustment of rates as they existed at the time of the formation of the association, while Mr. Collbran claimed that the express purpose for which the association was formed is the proper adjustment and equalization of rates.

Upon a vote being taken the resolution was lost. Ayes, Collbran, Culp and Davant; noes, Waller and Knox.

The Commissioner decided that the Committee and the Commissioner had jurisdiction over the question of the relative adjustment of rates.

Mr. Collbran offered the following:

Resolved: That the class rates B, C, D and F, from Lawrenceburg and Aurora, "Ohio river points," recently withdrawn by the Commissioner, be restored to the usual basis, and that

the initial lines, i. e., the L. & N., and the C., N. O. & T. P., adopt precautions to prevent any freight being way-billed upon these divisions except it originate at Lawrenceburg or Aurora, and be shipped through direct on through bills of lading.

Mr. Waller having seconded this resolution, Mr. Knox offered as an amendment:

That the rates from other landings on the Ohio, as far down as Cairo, and from landings on the Mississippi from Chester to Memphis be also made the same as from Cincinnati.

The amendment, being also seconded by Mr. Waller, was put to a vote and lost.

The original motion was then taken up and lost.

The Commissioner decided that the rates shall be higher than from Cincinnati by the proper differences on classes B, C, D and F.

Mr. Collbran gave notice of his intention to appeal from this decision to the board of control.

200 Mr. Culp offered and Mr. Knox seconded the following:

Resolved: That the rates from Cincinnati, Jeffersonville, Evansville, Cairo, and Belmont, on traffic from those points to Chattanooga, to points east of Birmingham, to points east of Calera, to West Point, Georgia, to points east of West Point, to points east of Columbus, Eufaula and River Junction, be made the same.

That the rates from Louisville, on traffic from that point proper, be made the bridge toll less than the rates from Jeffersonville, as per the following table:

Cars—passenger, baggage mail, and sleeping, each	$12.00
Cars—box, stock, flat, coal and caboose, each	6.00
Circus and menagerie cars, all kinds, each	5.00
Locomotives, (with or without tenders) on flat cars	30.00
Locomotives, on their own trucks, each	25.00
Live Stock (single or double deck) per car	4.00
Coal, coke, lime, sand, rough stone, and firewood, per car	3.00
Oil tanks (loaded)	5.00
Pig iron (car loads), per ton 2,268 lbs	20
Iron ore, old and new railroad iron and steel (C L), per ton 2,240 lbs	40
Ohio river cement, per bbl	4
Cement, plaster, stucco and salt (car load) per bbl	4
Coal oil and lubricating oil (carload) per bbl	8
Agricultural implements, agricultural machinery, barytes, clay, cooperage, feed, fertilizers, flaxseed, furniture, hay, meat in bulk, melons, oil cake, phos-	

phate rock, pipe (gas, water and sewer), shingles, straw, ties (railroad), vegetables (all kinds), wagons, per 100 lbs	3
Ice (carloads), per 100 lbs	1½
Apples, asphaltum, brick, bridge material (wood or iron), cotton-seed meal, cotton-seed oil, flour, grindstones, grits, heading, hominy, hoop-poles, iron scrap (including old wheels and axles), laths, logs, lumber, malt, meal, pig lead, roofiing slate, rosin, staves, stave blocks tanbark, tile, terpentine	3
All articles not enumerated above, per 100 lbs	3

That the rates from Henderson be made the bridge tolls less than the rates from Evansville, as per the following table:

Logs, timber, lumber, staves, heading, hoop-poles, tanbark, wood, rock, sand, coal, coke, ore, brick, cement, lime, fertilizers, pig iron, naval stores, and salt, per 100 lbs	1
Hay, grain (carloads), onions, live stock, hog product, beef, flour, meal, nails and manufacturing iron, per 100 lbs	2
Passenger baggage, and postal cars, on their own wheels, each	4.00
Same, loaded on other cars, each	6.00
Box, stock, flat, gondola and express cars, on their own wheels, each	3.00
Same, loaded on other cars, each	5.00
Locomotives and tenders, loaded on their own wheels	10.00
Same, loaded on cars	15.00
All other classes of freight per 100 lbs	3

That the rates from Columbus, East Cairo and Hickman, Ky., be two cents per hundred lbs. less than the rates from Cairo and Belmont, that being the assumed cost of transfering across the river; that the rates from Memphis be two cents per 100 lbs. less than the rates from Cairo and Belmont to cover the cost of transfering across the river at Memphis; that the rates from Huntington, Vicksburg and New Orleans be two cents per 100 lbs. less than the rates from Cairo.

201 That the rates from Jeffersonville, New Albany, Evansville, Cairo and Belmont on shipments from those points to Decatur, Birmingham, Montgomery, Selma, and points based on Decatur, Birmingham, Montgomery and Selma, to Columbus, Eufaula, to points between Montgomery and West Point, Montgomery and Columbus, Montgomery and Eufaula,

points west of Chattahoochee River and east of the Mobile & Ohio R. R., and south of the Memphis & Charleston R. R., not including local stations on the South & North Alabama R. R., and stations on the A. G. S. R. R. west of Birmingham, be made the same; that is to say, the rates to any given point specified, on traffic for each one of the points named, shall be the same.

That the rates from Louisville to the points described be the bridge tolls less than the rates from Jeffersonville.

That the rates from Henderson be the bridge tolls less than the rates from Evansville.

That the rates from Columbus, East Cairo and Hickman, Ky., be two cents less per 100 lbs. than the rates from Cairo and Belmont.

That the rates from Memphis and Huntington, Vicksburg and New Orleans be two cents per 100 lbs. less than the rates from Cairo.

That the rates from Cincinnati to the territory described shall be greater than the rates from Jeffersonville, New Albany, Cairo and Belmont, as follows:

1	2	3	4	5	6	A	B	C	D	E	H	F	G
10	10	10	10	10	10	4	5	5	4	5	5	10	15

That in making rates from points north of the Ohio, and west of the Mississippi rivers, to points east of the M. & O. R. R., and south of the M. & C. R. R., the rates so fixed from Cincinnati, New Albany, Evansville, Cairo, Columbus, Memphis, Huntington, Vicksburg, and New Orleans, shall be taken as the basis, adding the lowest obtainable arbitraries to the established rates from such points, and using as the through rates that combination which makes the lowest totals, and dividing rates as provided for by the contract between the Associated Roads of Kentucky, Tennessee, and Alabama.

That the rates from Louisville to points on the A. G. S. road west of Birmingham, to all points on the M. & C. R. R., and all landings on Tennessee River between Bridgeport and Decatur, and to all points on and west of the M. & C. road covered by the contract, shall be less than the rates from Jeffersonville the cost of bridge tolls.

That the rates from Cincinnati to the points named shall be higher than the rates from Jeffersonville as follows:

To points on the A. G. S. R. R. west of Birmingham, to Meridian, to points on the V. & M. R. R. points on the V., S. & P. R. R., not including Shreveport, to points on the N. O. & N. E. R. R., and to New Orleans and Vicksburg,

1	2	3	4	5	6	A	B	C	D	E	H	F	G
8	8	8	8	8	8	4	4	4	4	4	4	8	12

except where these differentials would make the rates from Cincinnati greater per ton per mile than the rate from Jeffersonville, in which case they are not to be higher per ton per mile, and that when specific rates may be made on articles which come under one of the numbered classes, the differential shall not be reduced by reason of a specific rate being made on such article.

That the rates to the other points named shall be made higher from Cincinnati than from Jeffersonville, as follows:

1	2	3	4	5	6	A	B	C	D	E	H	F	G
10	10	10	10	10	10	4	5	5	4	5	5	10	15

provided that this does not make the rate from Cincinnati higher per ton per mile than from Jeffersonville, in which case the rate from Cincinnati shall not be higher per ton per mile than from Jeffersonville. In case a specific rate is made on an article included in the numbered classes, the differentials, as fixed by this resolution between Cincinnati and Jeffersonville, shall not be reduced.

202 Upon request of Mr. Collbran, the Commissioner ordered that each member of the Committee be furnished with a copy.

Pending the preparation of such copies, the Commissioner reported the result of his investigation of the matters of which investigation had been asked, as follows:

Grain from East St. Louis to Mobile and Meridian via The L. & N.

There is no evidence of under-billing.

Movement of Meat from Chicago from January 1st to February 12th.

The shipments have been as follows:

		Pounds.
Via Nashville, Chattanooga & St. Louis Railway,		
From Cairo		52,000
Via Mobile & Ohio Railway,		
From Cairo		591,038
Via Cincinnati, New Orleans & Texas Pacific Railway,		
From Cincinnati		2,587,495
Via Louisville & Nashville Railroad,		
From Cincinnati	200,000	
From Evansville	3,959.498	
From Louisville	1,961,541	6,121,039
Total		9,351,572

Flour from Davenport via Cincinnati.

There is no billing from Cincinnati of Davenport flour. There is billing of a few cars from Seneca, which is probably the flour referred to. There is not a single instance in which the proper rate has not been charged, it being set up at Cincinnati to the sacked-flour rate. There is no instance in which I find that any rebate has been refunded to the shipper.

Hog product from the East St. Louis Packing and Provision Company to Association Territory via the L. & N.

Have all the billings of this freight, and have endeavored to get delivering lines to compare invoices with weights billed. We have heard from about one-third of the shipments, and there is no underbilling so far as investigated, and rates are maintained so far as we know.

Divisions from Kansas City to Vicksburg via Memphis and Huntington.

Have examined all billing and find divisions correct.

Texas Oats.

About forty cars of oats have gone from Shreveport and points on the Texas & Pacific road to Atlanta and other points, billed at a rate of 20 cents per 100 lbs. from Texas points to Shreveport; 9 cents from Shreveport to Vicksburg; 15 cents and 15 1-2 cents from Vicksburg to Atlanta via Birmingham and the Georgia Pacific road. This cuts the rate via Memphis. Mr. Collbran's attention has been called to this; and he has agreed to maintain rates.

Meeting adjourned at 1:35.

203 Afternoon Session.

Committee came to order at 3:45 P. M.

Referring to business from St. Louis via Vicksburg, the commissioner reported that there was nothing in the billing to indicate that there was anything wrong with the rates.

Mr. Culp's resolution of the morning session in regard to the relative adjustment of rates coming up for consideration, Mr. Knox moved to amend by adding:

That rates from St. Louis, Chicago and other points north of the Ohio river, from which it may be desirable to make through rates, and rates from Evansville, Henderson, Cairo, Belmont, Columbus, Memphis, Huntington, Vicksburg, and New Orleans on competitive business to points south of the Ohio river and on and west of the M. & O. R. R., including points in Texas,

Louisiana and Arkansas, for which two or more parties to this agreement compete, shall be adjusted upon differentials as equitable to all parties to this agreement as can be adopted in competition with or by negotiation with competing lines not members of this association. These differentials to be fixed as rapidly as possible by the General Freight Agents' Committee, or, it failing to agree, by the Commissioner as provided for in the agreement.

This amendment was accepted by Mr. Culp, and upon a vote being taken the resolution was lost. On a call for the ayes and noes, Messrs. Culp and Knox voted aye; Messrs. Collbran, Davant and Waller, no.

Mr. Davant offered the following:

Whereas: on the 18th February, 1885, the Memphis and Charleston R. R. was induced temporarily to reduce the Memphis differentials on Green line business from five to three cents, upon the representation that Memphis merchants could, under the existing circumstances, control a share of the business, reserving the right to restore the five cents differential in case it should be demonstrated that the reduction worked against Memphis; and,

Whereas: It can be shown that the change has, and does, under existing circumstances, hamper and exclude the merchants of Memphis from the aforesaid territory, therefore,

Resolved: That the differential of five cents per 100 lbs. heretofore allowed Memphis be restored, and that the commissioner authorize the issuance of rates on that basis to take effect on March 5th, 1886.

This resolution was seconded by Mr. Collbran, voted upon and lost; Aye, Davant; Noes, Collbran, Culp, Knox and Waller.

Adjourned.

The commissioner subsequently decided that the following basis should be used in fixing the relative adjustment of rates from river points:

That the rates from Cincinnati, Jeffersonville, Louisville, Evansville, Henderson, Cairo and Belmont to Chattanooga, and to points east of Birmingham, east of Calera, to West Point, Ga., and points east of West Point, to points east of Columbus, Eufaula and the Chattahoochee river shall be the same.

That the rates from East Cairo, Columbus, Ky., and Hickman, Ky., shall be two cents per hundred pounds less than the rates from Cairo.

That the rates from Memphis, Huntington, Vicksburg, and New Orleans shall be two cents per hundred pounds less than the rates from Columbus, Ky.

That the rates from Jeffersonville, Louisville, New Albany, Evansville, Henderson, Cairo, and Belmont to Bir-
204 mingham, Montgomery, Selma, and points based thereon, Columbus, Ga., Eufaula, Ala., points between Montgomery and West Point, Montgomery and Columbus, Montgomery and Eufaula, points on and west of the Chattahoochee river and east of the Mobile & Ohio Railroad and south of the Memphis & Charleston Railroad, not including local stations on the South & North Alabama Railroad and stations on the Alabama Great Southern Railroad west of Birmingham, shall be the same.

That the rates from East Cairo, Columbus, Ky., and Hickman, Ky., to the same territory shall be two cents less than Cairo.

That the rates from Memphis, Huntington, Vicksburg, and New Orleans shall be two cents per hundred pounds less than Columbus, Ky.

That the rates from Cincinnati to the same territory shall be greater than the rates from Jeffersonville, by,

1	2	3	4	5	6	A	B	C	D	E	F	H
10	10	10	8	7	6	4	2	2	2	4	4	4

That the rates from Cincinnati to local points on the Alabama Great Southern Road west of Birmingham, to local points on the Memphis & Charleston Railroad east of Decatur, to Tennessee river landings between Bridgeport and Decatur, shall be the same as from Jeffersonville.

That the rates from Cincinnati to Meridian and local stations on the Vicksburg & Meridian and Mobile & Ohio roads shall be the following figures higher than from Jeffersonville:

1	2	3	4	5	6	A	B	C	D	E	F	H
8	8	8	7	6	5	4	2	2	2	4	4	4

That the rates from Cincinnati to New Orleans, Vicksburg, Natchez, Greenville and Baton Rouge shall be the following differences higher than from Jeffersonville:

1	2	3	4	5	6	A	B	C	D	E	F	H
8	8	8	4	4	4	3	2	2	2	3	4	3

That the rates from Cincinnati to stations on the Memphis & Charleston Railroad west of Decatur, and to stations on the Illinois Central, southern division, shall be the following differences higher than from Jeffersonville:

1	2	3	4	5	6	A	B	C	D	E	F	H
10	10	10	8	7	6	4	2	2	2	4	4	4

except where these differences would make the rates from Cincinnati greater per ton per mile than from Jeffersonville, in which case they are not to be greater per ton per mile, and that when specific rates are named on articles that come under one of the numbered classes, the commissioner shall fix the differential.

That the rates so established from Cincinnati, Jeffersonville, New Albany, Evansville, Cairo, Memphis, Vicksburg, and New Orleans shall apply from depots of connecting lines at these points on business received from such connections. That the actual cost of switching or transfer from depots of connecting to depots of initial lines may be paid to the parties performing the service, but in no case to the shipper.

That on shipments of bacon, flour, grain, and hay coming to Louisville and reshipped south, which have paid the bridge tolls from Jeffersonville, the amount of such bridge tolls, which are now two cents per 100 lbs, and $1 per car on grain, and two cents per 100 lbs. and $2 per car on meat and flour, may be refunded to the shipper. JAMES R. OGDEN, Commissioner.

T. F. SPINK, Secretary.

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205 EXHIBIT NO. 22.

Circular No. 17.—1886.

Associate Roads of Kentucky, Tennessee and Alabama

Decision on Question of Relative Adjustment of Rates.

Ann Arbor, Mich., May 29th, 1886.

The Board of Control of the Associate Roads of Kentucky, Tennessee and Alabama, having, at a meeting held March 13, 1886, referred to me as arbitrator certain questions, stated as follows in their minutes:

"Agreed that the question to be submitted to arbitration is the relative adjustment of rates from Cincinnati, Louisville, Jeffersonville, Evansville, Henderson, Cairo, East Cairo, Columbus, Hickman, Memphis, Huntington, Miss., Vicksburg and New Orleans to Chattanooga and beyond and all points south of the Memphis & Charleston Railroad, including points in Richmond and Danville Territory, and on and east of the Mississippi river, to which two or more of the parties to this contract may compete.

"Also, whether rates from Nashville to the above specified points are subject to regulation under the agreement."

And the questions so referred, having been fully and carefully considered, I do now announce my decision as follows:

The rates from Nashville to the points named are subject to regulation under the agreement.

The rates from Henderson shall be the bridge tolls less than the rates from Evansville.

The permission to refund bridge tolls to the shippers at Louisville shall be extended to embrace all articles in classes B, C, D and F, and also potatoes, onions and apples.

The question of differentials from Cincinnati and Louisville into Montgomery territory has given me much concern, but I think a fair test of them can alone determine whether they are or are not just, and I decide that they shall remain as fixed by the commissioner's order until October 1, 1886.

In all other respects the order appealed from shall stand.

THOMAS M. COOLEY, Arbitrator.

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206 EXHIBIT NO. 23.

Circular Letter No. 38.—Series 1893-94.

The Southern Railway and Steamship Association.

Decision of the Board of Arbitration on the Question of Relative Rates from Memphis and New Orleans to Birmingham, Montgomery and Selma, Alabama.

This subject reached the Board of Arbitration at its session at Atlanta, Ga., January 13-19, 1894, upon reference from the Executive Board at its 28th session.

The following resolutions were offered:

"Resolved, That the rates from Mississippi river crossings be made as follows: To points south of the M. & C., east of the M. & O., the rates from New Orleans to be made the same as from Memphis, except that Rome and Dalton be made the same as to Atlanta, and Chattanooga to be made the same as Nashville, and except that Jacksonville and points on and south of the line of the F. C. & P. R. R., River Junction to Fernandina, inclusive, shall be made the same as from Nashville, Tenn., and except further that the rates to Huntsville, Decatur, Florence, Sheffield, and Tuscumbia shall be made the same as to Atlanta, but not higher than the local tariff rates of the L. & N. from New Orleans to Decatur, and not higher than the Memphis combination. The rates from Vicksburg and other common

points on the east bank of the Mississippi river south of Memphis shall be made the same from all points as from New Orleans. The above basis not to apply on sugar, coffee, rice, tropical fruits or on fertilizers, which are arranged with special relation to the rates from South Atlantic ports and eastern cities."

"Resolved, That the rates from Mississippi river crossings to association territory be made as follows: To points south of the M. & C. and east of the M. & O., the rates from New Orleans to be made the same as from Memphis, except that Chattanooga, Rome and Dalton be made the same as to Atlanta, and except that Jacksonville, and points on and south of the line of the F. C. & P. R. R., River Junction to Fernandina, inclusive, shall be made the same as from Nashville, Tenn., and except further that the rates to Huntsville, Decatur, Florence, Sheffield and Tuscumbia shall be made the same as to Atlanta, but not higher than the local tariff rates of the L. & N. from New Orleans to Decatur, and not higher than the Memphis combination. The rates from Vicksburg and other common points on the east bank of the Mississippi river south of Memphis shall be made the same from all points as from New Orleans. The above basis not to apply on sugar, molasses, coffee, rice, tropical fruits or on fertilizers, which are arranged with special relation to the rates from South Atlantic Coast points and eastern cities."

207

The Board decides that the rates from New Orleans shall be, to points on and south of the Memphis & Charleston Railroad, and east of the Mobile & Ohio Railroad, the same as from Memphis, Tenn., with the following exceptions, viz:

First. The rates to Attalla, Gadsden, Anniston, Rome, Chattanooga and Dalton shall be the same as to Atlanta.

Second. The rates to Huntsville, Decatur, Florence and Sheffield, Ala., shall be the same as to Chattanooga, but not higher than the local tariff rates of the L. & N. from New Orleans to Decatur, and not higher than the Memphis combination.

Third. The rates to points on and south of the line of the Florida Central & Peninsular Railroad, River Junction to Fernandina, inclusive, shall be the same as from Nashville, Tenn.

Fourth. The rates to Birmingham, Ala., and points taking Birmingham rates, shall not be less than to Montgomery and Selma, Ala.

The rates from Vicksburg, Miss., and other points on the east bank of the Mississippi river, south of Memphis, shall be the same as from New Orleans, except that to points on and south of the line of the Florida Central & Peninsular Railroad, River Junction to Fernandina, inclusive, the rates shall be the same as from Memphis, Tenn.

The above basis shall not apply from New Orleans on sugar, molasses, coffee, rice and tropical fruits, fertilizers, or other commodities upon which rates have heretofore been fixed with relation to the rates from eastern cities or South Atlantic Coast points, or without regard to the rates from Ohio river points and Memphis.

JOHN SCREVEN,
THOS. H. CARTER,
E. K. SIBLEY,
Board of Arbitration.

Attest: W. L. McGILL, Secretary.
Atlanta, Ga., Jan. 19th, 1894.

EXHIBIT 24.

Form 999.

Louisville & Nashville Railroad Co.,
Office of General Freight Agent.

Rates of Transportation (Classification herewith) taking effect ....., 189..

From New Orleans, Louisiana, To	Classes: 1	2	3	4	5	6	A	B	C	D	E	H	F	Sugar. In Bbls. Car Load.	Sugar. In Bbls. less car Load & except bbls. any quantity.
Montgomery, Ala..	94	88	74	59	48	37	24	27	20	16	44	29	32	15	18
Atlanta, Ga.....	103	88	77	64	52	42	24	31	24	20	44	49	40	18	21

(Indorsed:) United States Circuit Court, Southern District of Alabama. No. 207. Interstate Commerce Commission versus Louisville & Nashville Railroad Company, and others. In Equity. Testimony and exhibits thereto of F. E. Calloway, et al., taken before Interstate Commerce Commissioner J. C. Clements, in the case of Calloway vs. the L. & N. R. R. Co., et al., and filed in this cause by defendants. Filed November the 25th, A. D. 1898. Richard Jones, Clerk.

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209 PROPOSED FINDINGS OF FACTS FILED BY THE DEFENDANTS BEFORE THE I. C. C., IN THE CASE OF CALLOWAY versus L. & N. R. R. CO., ET. AL., AND FILED IN THIS CAUSE BY DEFENDANTS LOUISVILLE & NASHVILLE RAILROAD CO., ET AL.

Interstate Commerce Commission,
Washington, D. C.

I, Edward A. Moseley, Secretary of the Interstate Commerce Commission, do hereby certify that the paper hereto attached is a true and correct copy of the proposed findings of fact filed by the defendants before the Interstate Commerce Commission in the case of Fuller E. Calloway vs. the Louisville and Nashville Railroad Company. et al.

In testimony whereof, I have hereunto subscribed my name and affixed the seal of the Commission, this fourth day of November, 1898. EDW. A. MOSELEY, Secretary.
[Seal of Interstate Commerce Commission]

Mar. 25, '97. 37570

Fuller E. Calloway
vs.
The Louisville & Nashville Railroad Company, et al.

Before the Interstate Commerce Commission.

Findings of Fact Proposed by the Defendants:

I.

Complainant Fuller E. Calloway is a dealer in dry goods, groceries, and general merchandise at LaGrange, Georgia, and is

a shipper or consignee of such goods and merchandise from New Orleans, Louisiana, to LaGrange.

Petition p. 1.

II.

LaGrange is situated on the Atlanta & West Point Railroad. It is 71 miles south and west from Atlanta, north and east, it is 16 miles from West Point, Ga., and 104 miles from Montgomery, Ala.

210 There is no strictly wholesale business house in LaGrange. It has a population between four and five thousand. It is not situated on a navigable water course. It has no competitive railroad. (No one but complainant does a wholesale business; he is also in retail business.)

Calloway's testimony, pp. 4, 8, 9.

In 1890, the population was 3100.

Calloway's testimony, p. 9.

The population of Atlanta is now estimated at 100,000. In 1890 is was 64,000. Calloway's testimony, p. 10.

Before railroads were built the main market for LaGrange was Charleston. Calloway's testimony, p. 10.

Before railroads were built cotton was shipped to Columbus, Griffin and Atlanta by wagon. Cary's testimony, p. 63.

The wagons would bring back supplies. It took about 5 days to make the round trip to Columbus which was about 50 miles. Cary's testimony, pp. 63 and 64.

There has been great improvement in LaGrange since the railroad was built. Ibid., p. 64.

III.

Freight shipped from New Orleans to LaGrange has a choice of several routes:

1. By the Illinois Central Railroad and its connections to Atlanta and from Atlanta to LaGrange.

2. By the New Orleans and Northwestern Railroad and its connections to Atlanta, and from Atlanta to LaGrange.

3. By the Louisville and Nashville Railroad and its connections north of Montgomery to Atlanta, and from Atlanta to LaGrange.

4. By the defendants' lines: The Louisville and Nashville Railroad from New Orleans to Montgomery, Alabama; the Western Railway of Alabama from Montgomery to West

Point; the Atlanta and West Point Railroad from West Point to LaGrange. Lutz's testimony, p. 49.
Knott's testimony, p.88.

By all the routes named, except that of the defendants', freight must go from New Orleans to Atlanta and from Atlanta to LaGrange. Haskell's testimony, p. 15-19.

211 By defendants' route the freight does not go to Atlanta. LaGrange being between West Point and Atlanta on the Atlanta & West Point Railroad.
Lutz's testimony, p. 55.

IV.

The defendant, the Louisville & Nashville Railroad Company, operates a railroad from New Orleans to Montgomery, Ala.

The defendant, the Western Railway of Alabama, operates a railroad from Montgomery, Ala., to West Point, Georgia.

The defendant, the Atlanta & West Point Railroad Company operates a railroad from West Point, Ga., to Atlanta, Ga.

Each of the defendants is a corporation, separate and distinct from the others.

The general officers of the Western Railway of Alabama and the Atlanta & West Point Railroad Company are the same, and the two roads are under the same management and control.
Hunter's testimony, p. 20.
Smith's testimony, p. 34.

They have separate boards of directors.
Smith's testimony, p.34.

The Louisville & Nashville Railroad is not under any common management or control with the Atlanta & West Point Railroad and the Western Railway of Alabama.
Knott's testimony, p. 66.

Except in the issuance of through bills of lading and agreed through rates from New Orleans to Atlanta, there is no management or control between the Louisville & Nashville Railroad Company and the Atlanta & West Point and Western Railway of Alabama. Lutz's testimony, p. 45.

Note: On page 1 of the proof, Commissioner Clements says: "There does not seem to be any dispute as to the rates in effect."

"The distances are also set forth in the answer and complaint. I suppose they may be accepted as found in the complaint and answer, except so far as it may be necessary to correct some of them."

V.

Between LaGrange and Atlanta are the following stations and in the order named, and at the following distances
212 from Atlanta:

LaGrange, 71 miles from Atlanta.
Hogansville, 58 miles from Atlanta.
Newnan, 39 miles from Atlanta.
Palmetto, 25 miles from Atlanta.
Fairburn, 18 miles from Atlanta.

The Following are the distances from Montgomery, Alabama:

LaGrange, 104 miles from Montgomery.
Hogansville, 117 miles from Montgomery.
Newnan, 136 miles from Montgomery.
Palmetto, 150 miles from Montgomery.
Fairburn, 157 miles from Montgomery.

VI.

The rates from New Orleans, La., to LaGrange, Hogansville, Newnan, Palmetto and Fairburn are fixed by adding to the rate from New Orleans to Atlanta, the local rate from Atlanta to those points respectively. Lutz's testimony, p. 55. Knott's testimony, pp. 68 and 69.

The local rates from Atlanta to those respective points are determined by the Railroad Commission of Georgia.
Lutz's testimony, p. 46.

The factors proven to establish the rates from New Orleans to Atlanta will be more fully stated hereinafter.

In this place it will suffice to state:

The rate from New Orleans to Atlanta is fixed:

1. By competition between the different railway companies and their connections, which carry freight from New Orleans to Atlanta.

2. By competition between New Orleans, and points on the Mississippi and Ohio rivers from which freight is carried to Atlanta.

3. By competition between Ohio river points on the one hand and Baltimore and other eastern points on the other from which freight is carried to Atlanta.

4. By competition between the carriers from the last two classes of points named to Atlanta.

Knott's testimony, pp...

In order that the figures may be more easily carried in the memory the rates on only two classes will be stated:

213 Class I and Class A.

The same factors and reasoning apply to, and the same deductions follow from rates on all the classes 1, 2, 3, 4, 5, 6 and A, B, C, D, E, H and F.

The rates from New Orleans to Atlanta are as follows:

To Atlanta from New Orleans, per 100 lbs.; Class I, 103; Class A, 24. Defendants' answer, p. 11.

The local rate from Atlanta to the points named are as follows, and are fixed as stated before by the Railroad Commission of Georgia:

From Atlanta—per 100 lbs.

To	Class I	Class A.
LaGrange	40	17
Hogansville	36	15
Newnan	30	13
Palmetto	24	12
Fairburn	22	11

Lutz's testimony, p. 46; Exhibit 18.

The rates from New Orleans to the points named are as follows—the local rates from Atlanta being added to the rate to Atlanta:

From New Orleans—per 100 lbs.

To	Class I	Class A.	
LaGrange	143	41	Lutz, p. 46.
Hogansville	139	39	Petition, p. 2.
Newnan	133	37	Petition p. 2, as corrected by Knott, p. 66.
Palmetto	127	36	Petition, p. 2.
Fairburn	125	35	Petition, p. 2.
Atlanta	103	24	

These rates are such as are charged from New Orleans to the points named on freight carried by the Illinois Central Railroad Company and connections, and the New Orleans & Northeastern Railroad Company and connections.

Lutz's testimony, p. 46; Knott's testimony, pp. 88 & 89.

214 If defendants charge more than these rates to any of the points named, shippers will select other carriers and defendants will lose that much business unless the other carriers increase their rates accordingly.

Lutz's testimony, p. 46.

The rates from New Orleans to Montgomery, Ala., a competitive point, such as Atlanta is, are as follows:

From New Orleans—per 100 lbs.

To	Class I	Class A.
Montgomery	94	34

Defendants' answer, pp. 5 and 11.
Lutz's testimony, p. 46.

The local rates from Montgomery to West Point are:

From Montgomery—per 100 lbs.

To	Class I	Class A.
West Point	55	21

These rates have been approved by the Alabama Railroad Commission. Lutz's testimony, p. 47.

The local rates from West Point to the points named are as follows:

From West Point—per 100 lbs.

To	Class I	Class A.
LaGrange	—	—
Hogansville	—	—
Newnan	—	—
Palmetto	—	—
Fairburn	—	—

These rates have been approved by the Georgia Railroad Commission. Lutz's testimony, p. 47.
Exhibit 19.

The local rates from Montgomery to the points named are as follows, and their respective distances from Montgomery cause the difference and increase in such rates:

From Montgomery—per 100 lbs.

	To	Class I	Class A.
	LaGrange	75	31
215	Hogansville	81	33
	Newnan	88	35
	Palmetto	91	36
	Fairburn	95	36

Defendants' answer, p. 5.

The rates from Montgomery to LaGrange, Hogansville, Newnan, Palmetto and Fairburn are the sum of the local rates from Montgomery to West Point and from West Point to the respective stations.

The rates from Montgomery to West Point are approved by the Railroad Commission of Alabama, and the rates from West Point to the respective stations are approved by the Railroad Commission of Georgia.

If the rates to the points named could be fixed by adding to the through rate from New Orleans to Montgomery, the local rates from Montgomery to the points named, the result would be:

From New Orleans—per 100 lbs.

To	Class I	Class A.
LaGrange	169	55
Hogansville	175	57
Newnan	182	59
Palmetto	185	60
Fairburn	189	60

Defendans' answer, p. 5; Knott's testimony, p. 72.

These rates are in excess of the rates charged in each instance.

	Local rates added to Montgomery rate		Local rates added to Atlanta rate		Excess on rates charged	
	C. I.	C. A.	Class I.	Class A.	Class I.	Class A.
LaGrange	169	55	143	41	26	14
Hogansville	175	57	139	39	36	18
Newnan	182	59	133	37	49	22
Palmetto	185	60	127	36	58	24
Fairburn	189	60	125	24	64	36

VII.

The rates charged from New Orleans to LaGrange are not excessive, but are reasonable and just for the service rendered in and of themselves. Lutz's testimony, p. 46.

216 They are less than could be reasonably charged, were it not for the lower rates in effect to Atlanta. Knott's testimony, p. 69.

A reasonable rate would be the sum of the rates from New Orleans to Montgomery and the rates from Montgomery to LaGrange. Ibid.

VIII.

The rates charged from New Orleans to LaGrange are not

excessive, unreasonable or unjust as compared with rates charged from New Orleans to Hogansville, Newnan, Palmetto or Fairburn, because the transportation to such latter locations is conducted under circumstances and conditions substantially dissimilar to those under which the transportation to LaGrange is conducted.

Hogansville, Newnan, Palmetto and Fairburn are nearer to Atlanta than LaGrange is.

The local rates from Atlanta to Hogansville, Newnan, Palmetto and Fairburn are less than the local rates to Newnan, because those stations are nearer to Atlanta than LaGrange is.

The rates from New Orleans to Hogansville, Newnan, Palmetto and Fairburn are consequently less than the rates from New Orleans to LaGrange, the rates from New Orleans to all of said stations being the rates from New Orleans to Atlanta, plus the local rates from Atlanta to the respective stations.

IX.

The rates charged from New Orleans to LaGrange as compared with the rates charged to other points do not unjustly discriminate against the complainant or any other person or against the City of LaGrange or its vicinity, or the traffic thereof, nor do said rates subject merchants or dealers at LaGrange to any undue or unreasonable prejudice or disadvantage nor do they give merchants or dealers at Hogansville, Newnan, Palmetto, Fairburn or other localities or to traffic consigned thereto any undue or unreasonable preference or advantage.

X.

Atlanta, Georgia, is a pivotal point for the purpose of rate making into and out of the territory south of the Ohio river and east of the Mississippi river.

Knott's testimony, p. 93, 94, 99, 100.

217 XI.

The same classes of freight that are shipped from New Orleans through Montgomery to LaGrange, Hogansville, Newnan, Palmetto and Fairburn, are also shipped to said stations through Atlanta from Baltimore, Philadelphia, New York, Boston and other supply markets in the northeast.

Knott's testimony, p. 74, 75.

The rates on every class of freight from Baltimore and other northeastern supply markets to Atlanta are controlled by the low rates accepted by steamboats and sailing vessels from Baltimore to Savannah and by steamboats on the Savannah

river from Savannah to Augusta, added to rail rates, established by the Georgia Railroad Commission from Augusta to Atlanta. Knott's testimony, p. 74.

Baltimore and the other northeastern supply markets compete with each other for the trade of Atlanta. And numerous carriers whose lines extend from Baltimore and the other northeastern supply markets to Atlanta compete with each other for the carriage of the traffic passing between said points. Some of said carriers are part rail and part water and some of them all rail. Knott's testimony, p. 75, 83.

The competition between Baltimore and other northeastern supply markets, as well as the competition between the numerous carriers whose lines extend from said markets to Atlanta, is active, aggressive and effective.

XII.

Cincinnati, Ohio and Louisville, Kentucky, are important supply markets situated on the Ohio river. And they have lines of railway which extend to Atlanta.

The same classes of freight that are shipped from New Orleans through Montgomery to LaGrange, Hogansville, Newnan, Palmetto and Fairburn are also shipped to said stations through Atlanta from Cincinnati, Louisville and other supply markets on the Ohio river. Knott's testimony, p. 76, 83.

Cincinnati, Louisville, and other Ohio river supply markets not only compete with each other, but they also compete with Baltimore and other northeastern supply markets, for the trade of Atlanta. Knott's testimony, p. 83.

218 And the various rail carriers whose lines extend from Cincinnati and Louisville to Atlanta not only compete with each other for the carriage of traffic passing between the Ohio river and Atlanta, but they use every effort to induce Atlanta to purchase her supplies in the northwest, so that they may secure the carriage of them. The result is that there is active, aggressive and effective competition as between the carriers whose lines extend from Cincinnati, Louisville and other Ohio river supply markets to Atlanta as against the carriers whose lines extend from Baltimore and other northeastern supply markets to Atlanta.

XIII.

New Orleans is situated on the Mississippi river with deep

water navigation to the ocean. There are also a number of railways centering at that point. The result is that New Orleans is an important supply market and her merchants naturally desire to compete in Atlanta with Baltimore and other northeastern supply markets, as well as with Cincinnati, Louisville and the other Ohio river supply markets.

In order to enable the New Orleans merchants to compete in the Atlanta market, it becomes absolutely necessary that defendants and other rail carriers, whose road extends from New Orleans to Atlanta, shall offer, approximately as low rates on the various classes of freight as are acceptable by the carriers whose lines extend from Baltimore, and the other northeastern supply markets, to Atlanta, or as are accepted by the carriers whose lines extend from Cincinnati, Louisville and other Ohio river supply markets to Atlanta. Knott's testimony, p. 84.

If defendants and other carriers whose roads extend from New Orleans to Atlanta, should materially increase the rates between those points, it would be impossible for the New Orleans merchants to sell in Atlanta market, in competition with the merchants of Baltimore and other northeastern supply markets or in competition with merchants of Cincinnati, Louisville and other Ohio river supply markets. Ibid.

Such an increase of rates would not only drive New Orleans out of the Atlanta market, but it would also prevent defendants and other carriers from getting any traffic for carriage from New Orleans to Atlanta. Ibid.

XIV.

The rates which defendants can obtain for transportation from New Orleans to Atlanta are controlled by the
220 following competitive circumstances and conditions:

First. Competition of Markets:

a The competition between Baltimore and other northeastern supply markets, as against each other, for the trade of Atlanta.

b The competition between Cincinnati, Louisville and other Ohio river supply markets, as against each other, for the trade of Atlanta.

c The competition of Baltimore and other Northeastern supply markets, as against Cincinnati, Louisville and other Ohio river supply markets, and against New Orleans as a supply market for the trade of Atlanta.

Second. Competition between carriers:

a The competition as against each other, of the various carriers whose lines extend from Baltimore and other northeastern supply markets, to Atlanta.

b The competition, as against each other, of the various carriers whose lines extend from Cincinnati, Louisville and other Ohio river supply markets, to Atlanta.

c The competition, as against each other, of the various carriers whose lines extend from New Orleans to Atlanta.

d The competition, as against each other, of the several classes of carriers above designated as A., B. and C.

The competitive circumstances and conditions above referred to have existed for many years and have resulted in establishing certain relative rates between said various supply markets, and the City of Atlanta.

The relation existing between said rates, is as follows:

First. The rates on the numbered classes from Boston, New York and Philadelphia to Atlanta, are certain fixed differentials higher than the rates from Baltimore to Atlanta.

Second. The rates on the numbered classes from Cincinnati and from Louisville to Atlanta are made as low as the rates from Baltimore to Atlanta.

Third. The rates on the numbered classes from New Orleans to Atlanta are made 4 cents per 100 pounds less than the rates from Cincinnati and from Louisville, to Atlanta.

221 The relation existing between said rates is the result of frequent and disastrous rate wars between the rival carriers in the past; and any attempt to disturb said relation would immediately lead to a repetition of such wars.

An increase in the rates from New Orleans to Atlanta will cause New Orleans merchants and carriers from New Orleans to Atlanta to lose the Atlanta business, unless the rates from the other supply markets in the northeast and on the Ohio river shall be correspondingly increased.

XV.

The same competitive circumstances and conditions above referred to have also resulted in establishing similar relations between the rates from said various supply markets, respectively to the City of Montgomery, and between the rates from said supply markets respectively to Atlanta, as compared with the rates from the same markets to Montgomery.

Knott's testimony, p. 65.

It is impossible to increase the rates from New Orleans to Atlanta without making a corresponding increase in the rates

from New Orleans to Montgomery; as to do so would give to Montgomery an undue advantage of Atlanta, in the competition which has, for many years, existed between these two cities, as rival markets of consumption.

Knott's testimony, pp. 86 and 87.

Water competition on the Alabama river prevents an increase in the rates to Montgomery. Ibid, p. 86.

XVI.

The relation which exists between the rates from New Orleans to Montgomery, and the rates from New Orleans to Atlanta, being established by the competitive circumstances and conditions above referred to, local, noncompetitive stations such as LaGrange, Hogansville, Newnan, Palmetto and Fairburn, located between Montgomery and Atlanta, have the choice of rates made by adding the rates from New Orleans to Montgomery to rates from Montgomery to said stations respectively, or made by adding the rates from New Orleans to Atlanta to the rates from Atlanta to those stations respectively.

It has appeared on page 10, that the local rates added to the Montgomery rate, are higher than the local rates added to the Atlanta rate, the latter rates being the ones adopted and charged by the defendants.

222 XVII.

While LaGrange is nearer to New Orleans, it is further from Atlanta than Hogansville, Newnan, Palmetto and Fairburn.

If the rates from New Orleans to said location stations were made via Montgomery, instead of via Atlanta, while the rates to LaGrange would be lower than the rates to any other of the said stations, yet the rates to LaGrange would be higher than the rates defendants now charge to LaGrange.

Knott's testimony, p. 69.

The reason that the rates from New Orleans to Hogansville, Newnan, Palmetto and Fairburn are lower than the rates to LaGrange, is due alone to the fact that those stations are nearer to Atlanta than LaGrange is. Knott's testimony, p. 73.

XVIII.

The principal competitors of defendants between New Orleans and Atlanta are

1. The Illinois Central Railroad Company to Winona, and the Southern Railway from Winona to Atlanta, a total distance of 647 miles.

2. The New Orleans and Northeastern Railroad Company to Meridian; the Alabama Great Southern Railroad Company to Birmingham and the Southern Railway from Birmingham to Atlanta, a total distance of 526 miles.

Knott's testimony, pp. 88 and 89.

The distance from New Orleans to Atlanta by defendants' road is 495 miles, or only 31 miles less than by the second route described above. Knott's testimony, p. 88.

The first and second routes are both in active and constant competition with defendants. They carry all classes of freight from New Orleans to Atlanta, at the same rates as are charged by the defendants. Ibid, 89.

If defendants increase the rates from New Orleans to Atlanta, the traffic will go by the other routes. The rates would remain the same. By adding the Georgia Railroad Commission rates from Atlanta to Fairburn, Palmetto, Newnan, Hogansville and LaGrange respectively, the rates from New Orleans to those stations would also remain the same as they now are.

If defendants and their competitors should agree to increase the rates from New Orleans to Atlanta the traffic would be diverted from New Orleans to the rival supply markets in the northeast and on the Ohio river. The merchants in
223 Fairburn, Palmetto, Newnan and Hogansville would purchase in those rival markets, ship their goods to Atlanta and thence to destination. They would have the same advantages in rates which they now have over LaGrange.

XIX.

The proportion of the through rates which defendants, the Atlanta and West Point Railroad Company receives out of the traffic from New Orleans to Atlanta while low, amounts to more than the cost of the movement. Lutz's testimony, p. 52.

If the defendants, the Atlanta and West Point Railroad Company and the Western Railway of Alabama, were compelled to reduce all their local rates to the proportion which they receive from through rates, it would entail upon said defendants an average annual loss of $133,956.24.

Hunter's testimony, pp. 21 and 22.

To avoid such loss resulting from reducing its local rates in accordance with and in proportion to through rates, the defendants, the Atlanta and West Point Railroad Company, would be compelled to decline to participate in through business.

XX.

The capital stock of the Atlanta and West Point Railroad Company, issued an [and] outstanding for the year ending June 30th, 1895, was $232,200.00. The dividends declared for that year upon such stock was $73,932, equal to 6 per cent.

The funded debt of the company for that year was $1,232,200, consisting of certificates of indebtedness unsecured by mortgage. Interest at the rate of 6 per cent. was paid on this indebtedness amounting to $73,932.

Smith's testimony, pp. 29 and 30.

The Atlanta and West Point Railroad is 85.70 miles long. The capital stock per mile is $14,378.06. The funded debt per mile is $14,378.06.

The Atlanta and West Point Railroad cost $2,464,400, or $28,756.12 per mile. This represents the road and equipment.

Smith's testimony, p. 30.

For the year ending June 30, 1895, the income was .....
The earnings from operation were .....
The operating expenses were .....
224 The officers and employes were .....
Their compensation was .....
The passenger train mileage was .....
The freight train mileage was .....
The freight traffic movement, exclusive of the company's material was .....

Smith's testimony, p. 30 and 31; Exhibits 5, 6, 7, 8, 9, 10.

The capital stock of the Western Railway of Alabama, issued and outstanding for the year ending June 30th, 1895, was $3,000,000. The dividends declared for that year was $60,000, equal to 2 per cent.

The funded debt issued and outstanding for that year was $1,543,000, consisting of first mortgage bonds. Interest at the rate of 4 1-2 per cent. was paid.

Smith's testimony, p. 32.

The Western Railway of Alabama is 133.10 miles long.
The capital stock per mile is $22,539.
The funded debt per mile is $11,593.
The Western Railway of Alabama cost $4,543,000, or $34,132.23 per mile. Smith's testimony, pp. 32 and 33.

For the year ending June 30th, 1895,
The income was .....
The earnings from operation were .....

The operating expenses were .....
The officers and employes were .....
Their compensation was .....
The passenger train mileage was .....
The freight mileage was .....
The freight traffic movement, exclusive of company's material was .....

Smith's testimony, p. 30; Exhibits 11, 12, 13, 14, 15.

The Atlanta and West Point Railroad Company and the Western Railway of Alabama were operated skilfully and economically. Smith's testimony, p. 34.

Efforts were made to secure traffic, and a full corps of traffic solicitors and Agents were employed.

Smith's testimony, p. 34; Lutz's testimony, pp. 46 and 47.

To duplicate the two railroads, including terminals,
225 would cost from $30,000 to $35,000 per mile.
Smith's testimony, p. 35.

The average capitalization per mile of all railroads in the United States is $63,206. Smith's testimony, p. 35.

The percentage of expenses to earnings of the Atlanta and West Point Railroad Company for the year aforesaid was 66.13 per cent. Smith's testimony, p. 35.

The percentage of expenses to earnings of the Western Railway of Alabama for the same time was 58.43 per cent.
Smith's testimony, p. 35.

The percentage of earnings to expenses of all the railroads in the United States was 67.48 per cent.
Smith's testimony, p. 35.

XXI.

The competitive points on the Western Railway of Alabama and the Atlanta & West Point Railroad are Selma, Montgomery, Opelika and Atlanta. Hunter's testimony, p. 20.

If the rates on interstate freight to and from LaGrange were adjusted so as not to exceed the rates to competitive points through which the traffic passes the loss would be $5,723.28 per annum, which is 37 per cent. of the local interstate freight earnings at LaGrange. Hunter's testimony, p. 21.

If the rates on interstate freight to and from all local stations on the line were adjusted so as not to exceed the rates to and from competitive points, the result would be a loss of $63,331.56, which is 41.6 per cent. of the total interstate freight earnings to and from local stations.

Hunter's testimony, p. 21.

If an adjustment of rates on freight to and from each of the competitive points named was made upon the basis of the rates to and from local stations on the line, the result would be a decrease of the gross freight revenue, by reason of the loss of competitive business, of $133,596.24, which is 24.7 per cent. of the total freight earnings of the line.

Hunter's testimony, pp. 21 and 22.

If a reduction of $63,331.56 in the earnings were made, the average yearly surplus of the past five years, applica-
226 ble to payment of dividends would be reduced from $159,902.40, to $96,570.84, leaving a possible dividend of 2.33 per cent. per annum.

Smith's testimony, p. 36.

If a reduction of $133,598.24 in the earnings were made, the average yearly surplus of the past five years, applicable to payments of dividends would be reduced from $159,902.40 to $26,304.16, leaving a possible dividend of .62 per cent. per annum. Smith's testimony, p. 36.

XXII.

The tonnage from New Orleans to Atlanta for one year, that ending March 31, 1896, over the Louisville & Nashville Railroad and connections, the Illinois Central and connections, and the New Orleans and Northeastern Railroad and connections, amounted to .....

Haskell's testimony, p. 12; Exhibit 1

The tonnage from points on and beyond the Ohio and Mississippi rivers and from and via Lexington, Kentucky, and from Nashville and Johnsonville, Tennessee, and Florence, Sheffield and Riverton, Alabama, to Atlanta during the same period amounted to ..... pounds.

Haskell's testimony, p. 13; Exhibit 2.

The tonnage from the eastern, seaboard and interior points in New England, New York, Pennsylvania, Maryland, Delaware

and West Virginia to Atlanta during the same period amounted to ..... Hunter's testimony, p. 14; Exhibit 3.

These three amounts include practically all tonnage shipped into Atlanta from all points. Haskell's testimony, p. 15.

The tonnage from New Orleans to Atlanta over the Atlanta & West Point Railroad and the Western Railway of Alabama for the year ending June 30, 1895, was 6773 tons.

The tonnage from New Orleans to LaGrange was for the same time 100 tons.

The tonnage from New Orleans to all local stations on the Atlanta & West Point Railroad and the Western Railway of Alabama was about 1000 tons.

The tonnage over said two railroads to Atlanta is more than 6 times as much as the tonnage to all the local stations.

Hunter's testimony, p. 23.

227 Traffic from New Orleans to LaGrange over defendants' lines amounted during the year ending June 30th, 1895, to $262.70. Lutz's testimony, p. 44.

For the same period the traffic over defendants' lines from New Orleans to Atlanta amounted to $13,470.19.

Lutz's testimony, p. 44.

The traffic to Atlanta was 60 times as much as that to LaGrange. Ibid, 45.

XXIV.

Freight shipped over defendants' lines from New Orleans to Atlanta goes on through bills of lading and in carload lots.

Lutz's testimony, pp. 45 and 46, 54 and 55.

Freight shipped from New Orleans to LaGrange goes generally in less than car load lots and is billed locally—billed to Montgomery and rebilled from Montgomery.

Ibid, pp. 45 and 46.

It costs three times as much to handle Lagrange business from New Orleans as Atlanta business from New Orleans.

Ibid, 53.

Through cars in a great many instances are loaded by shippers. They go straight through to Atlanta and are unloaded by the consignee. There is no rehandling at destination or intermediate stations. Less than a carload—five barrels of mo-

lasses—is brought down to the depot at New Orleans; a certain number of hands are employed there to receive it; it is put into the warehouse; finally it goes into the cars; it breaks bulk at Montgomery at the L. & N. depot; we have got to have a large number of hands to handle that class of freight; it is checked from one car out on the platform; transferred to another; then it comes to the Western Railway; it is taken out of the through train and transferred to a car that will be handled by the local train all the way from Montgomery to LaGrange. Then it is brought to ultimate destination as fast as we can bring it. That five barrels of molasses is (I believe), handled any where from four to a dozen times. There is risk and loss connected with that. The percentage of loss is greater than it would be if through freight—the number of claims we have for losses is greater. Lutz's testimony, pp. 53 and 54.

228

The capacity of freight locomotives of the Western Railway of Alabama and the Atlanta and West Point Railroad Company from Montgomery to Atlanta is 34 or 35 full loaded freight cars; on other parts a fair average is 30 cars.
Smith's testimony, p. 104.

The average number of loaded cars actually handled in freight trains is 20 on the West Point Railroad and 14 on the Western Railway of Alabama. Ibid.

The average number of empty cars handled in freight trains is 7 on the West Point Railroad, and 6 on the Western Railway of Alabama. Ibid.

XXV.

Joint through rates are arrived at in several different ways. The term joint through rate is sometimes applied to rates which are merely a combination rate, which is the sum of two or three existing rates added together to make the total rate between the points of shipment and destination.
Knott's testimony, p. 67.

Through rates from New York, Philadelphia, Boston and Baltimore, known as trunk line territory, to points west of Chicago and the Mississippi river, are a combination of the rate from New York to the Mississippi river point added to the rate from the Mississippi river point to the point of destination west of that river. Ibid.

Rates from points east of the Missouri to points west of that

river are in many cases made of combination rates—the sum of two rates. Ibid.

The large volume of traffic from points north of the Ohio river to points south of that river is to a large extent handled on combination rates. Ibid, p. 68.

Then, a joint through rate is made by agreement between connecting railways to establish a rate between two or more points on such railways, which may be less than the combined rates. Ibid.

It is not unusual throughout this country to make a total rate by combination; that is, the sum of two or more existing rates. Ibid.

The rate from New Orleans to Atlanta is a through rate reached by agreement between the line over which traffic moves from New Orleans to Atlanta. Ibid.

229 The rate from New Orleans to LaGrange is a combination rate. It is the sum of the rates from New Orleans to Atlanta and the rate from Atlanta to LaGrange. Ibid.

If distance alone controlled the rate to LaGrange, Hogansville, Newnan, Palmetto and Fairburn would be made by adding to the rate from New Orleans to Montgomery, the rate from Montgomery to those points. Ibid, 72.

Distance alone cannot control the rates from New Orleans to those points because of the effects of competition enjoyed respectively at these stations; that is, the effect of competition which has pulled down the rates to Atlanta. The benefit of the reduction in the rate to Atlanta extends back over the Atlanta & West Point Railroad, and makes them lower than they would be, except for the low rate in effect from New Orleans to Atlanta. Ibid, 73.

If distance could control, the rates from New Orleans to Atlanta would certainly be no lower than the rates to LaGrange or other intermediate points. Ibid, 74.

XXVI.

To a very great extent, the various classes of freight which are shipped over defendants' lines from New Orleans to Atlanta,

are also shipped from Boston, New York, Philadelphia and Baltimore to Atlanta. Knott's testimony, p. 75.

The rates from Boston, New York, Philadelphia and Baltimore to Atlanta are controlled by the rates of the water lines from Boston, Providence, New York, Philadelphia and Baltimore to Charleston, Savannah or Brunswick added to the rates from Savannah or Brunswick or Charleston to Atlanta the rates from Savannah or Brunswick to Atlanta are controlled by the Georgia Railroad Commission; and are further effected by the competition of steamboats in the Savannah river, which enables rates to be made to the interior of the State as far as Augusta by all the water lines from Eastern cities to Augusta, and the rates thus made to Augusta in turn effect the rates which can be charged from Savannah to Atlanta.

230 Ibid, 74 and 75.

The rates from the Eastern cities named to Atlanta are fixed by the rail and water carriers. Ibid, 75.

The all rail lines from those cities do compete on certain classes of traffic at a little higher rate, such higher rate being supposed to represent the slight difference in service. These classes constitute only a very small percentage of the traffic. Ibid.

The all rail lines probably get some of this business, not at the cities named, but at some intermediate or interior points not reached by the steamers. Ibid.

The rates from Boston, New York and Philadelphia to Atlanta by the rail and water route are on Class I., $1.14; Class A., .36. From Baltimore to Atlanta—Class I., $1.07; Class A., .34. Ibid, 76.

XXVII.

To a large extent there is competition in shipping from Cincinnati, Louisville and Ohio river points to Atlanta the various classes of freight shipped over defendant's line from New Orleans to Atlanta. Knott's testimony, p. 76.

The rates from Louisville and Cincinnati and Ohio river points to Atlanta on the same classes of freight are the same as the rates from Baltimore to Atlanta. Ibid.

The steamers sailing from Baltimore make a little lower rate to South Atlantic ports than the steamers from Boston, New York and Philadelphia. Ibid, 78.

The different steamship lines competing actively with each other from Boston, New York and Philadelphia make the same rates to South Atlantic ports from those cities. Ibid.

The rates from Boston, New York and Philadelphia to Atlanta are the same. The rate from Baltimore to Atlanta is less than the rate from Phildelphia to Atlanta. Ibid.

XXVIII.

The relation as between the rates from Baltimore and the rates from Louisville and Cincinnati grew out of the
231 condition requiring that there should be some understanding between competing lines as to the rates on similar kinds of traffic from different and competing points of shipment. This necessity has existed ever since there has been any competition in the carriage of through shipments of similar kinds of freight from the East and from the West into the South.
Knott's testimony, p. 78.

That competition began almost immediately after the war, and through lines for handling freight between Boston points began to be inaugurated; the steamers running from the different ports of Baltimore, Philadelphia, New York and Boston to the different ports along the South Atlantic began to issue in connection with rail lines from Savannah and Brunswick and Charleston, through rates and through bills of lading. In the same way the lines from the Ohio river at Louisville or Evansville began to issue through rate and through billing from those points to points in Georgia, Atlanta, for instance, and to solicit traffic from their connection beyond Louisville and Evansville and Cincinnati when destined to Atlanta. The routes leading from Chicago and Indianapolis, for instance, to New York and to Baltimore were also competing for business from those points destined to Atlanta, Macon or Augusta. It followed that lines which were competing for the same traffic originating at the same points, but which proposed to carry it down across the Ohio river and through Nashville and Chattanooga into Atlanta and Macon had to have some kind of an understanding as to what rates were to be quoted by the different routes. That understanding was arrived at through conference of traffic officia's, and through rate wars and through arbitration, and also sometimes through traffic agreements or associations. And in order to establish some basis by which shippers and carriers as well should know what the rate was between competing points to a common point of destination, the different lines competing for that traffic got together and, either as a result of rate

wars, or mutual agreement, or arbitration, established what is termed a basis for the relative adjustment of rates.

Ibid, 79 and 80.

232 Baltimore has the lowest rate made from any of the eastern cities, and the present agreement is that on certain classes, the rate from Baltimore to Atlanta being fixed by the railroad water routes, the lines from Louisville and Cincinnati use the same rate to Atlanta as Baltimore does. Ibid, 80.

There are certain other points on the Ohio and Mississippi rivers, Evansville, Jeffersonville, Memphis and Vicksburg, all the way down to New Orleans, from which the rates to Atlanta bear a certain relation to the rates from Cincinnati and Louisville to Atlanta. They are arrived at under the same conditions as those given above. Ibid, 80.

Conditions made it necessary that there should be some understanding as between the lines from the East and the lines from the West into Atlanta as to what the rates should be on the articles shipped from both points. It was also necessary that there should be some understanding as to what the rates should be from Western points as related to each other on articles of the same kind shipped to a common point of destination as Atlanta. The latter understanding was reached through the same history as the agreement with regard to eastern rates; that was the history of contentions and rate wars, and then agreement and then arbitration. The present basis for making rates from the river points has been in effect for more than ten years. It was first fixed by Mr. Jas. R. Ogden, who sat as arbitrator in March, 1896, and established the basis of rates that should obtain in making up traffic from Cincinnati, Louisville, Evansville, Henderson, Cairo, Memphis, Huntington, Vicksburg and New Orleans to Chattanooga, Atlanta, Macon, Birmingham, Montgomery and the territory south of the Ohio and east of the Mississippi.

Mr. Ogden's decision was not satisfactory to all the lines, and by agreement appeal was taken to Judge Thomas M. Cooley, who made some changes, but as a whole confirmed Mr. Ogden's rates.

Knott's testimony, pp. 81 and 82; exhibits 21 and 22.

Each line at each city where it is specially interested believes that some better adjustment might have been secured, but so far no better adjustment as a whole has been secured. The question has come up in different ways at different
233 times and has sometimes gone to arbitration again. The last decision was by arbitration of the Southern

Railway and Steamship Association in January, 1894, which decided certain relative rates between Memphis and New Orleans to Chattanooga and Atlanta and defined territories in that section of the country. Ibid, 82 and 83; exhibit 23.

On the same classes of freight shipped from Cincinnati and Louisville to Atlanta and from New Orleans to Atlanta the difference in rates is 4 cents less per 100 pounds in favor of New Orleans. Ibid, 83.

XXIX.

If the rates from New Orleans to Atlanta should be increased so that they would be the same as from New Orleans to La-Grange, the effect would be to divert the trade from New Orleans as shipped now in competition with Baltimore, Louisville and Cincinnati, to the last named markets. It would divert the trade from lines running between New Orleans and Atlanta. Knott's testimony, p. 84.

Such increase in rates from New Orleans to Atlanta would be very favorable to the merchants and shippers of Montgomery. The rail rates now in effect from New Orleans to Montgomery are those obtained in competition with the boats to Mobile and the boats plying the Alabama river from Mobile to Montgomery. It is entirely practicable for Montgomery to secure its freight at the present or lower rates if an attempt were made to advance the rail rates from New Orleans to Montgomery. Ibid, 85 and 86.

XXX.

There are ten or twelve different routes for the movement of freight between New Orleans and Atlanta.

1. The Louisville and Nashville via Montgomery and West Point, 495 miles.

2. The New Orleans and Northeastern to Meridian, via Alabama Great Southern to Birmingham and the Southern Railway, 615 miles.

3. The New Orleans and Northeastern to Meridian, the Southern Railway to Selma, the Western Railway and the Atlanta and West Point, 526 miles.

234 4. The Louisville and Nashville to Birmingham, the Southern to Atlanta, 583 miles.

5. The Louisville & Nashville to Anniston, Southern to Atlanta, 573 miles.

6. The Louisville & Nashville to Duke's, Alabama, the East and West Railroad to Cartersville, and the Western and Atlantic to Atlanta, 612 miles.

7. The New Orleans and Northeastern to Meridian, the Alabama Great Southern to Chattanooga and the Western and Atlantic, 630 miles.

8. The Louisville & Nashville to Montgomery and the Central of Georgia to Atlanta, 644 miles.

9. The Illinois Central to Winona, and the Southern Railway to Atlanta, 647 miles.

10. The Louisville & Nashville to Gadsden, Chattanooga Southern and Western and Atlantic, 739 miles.

11. The Louisville & Nashville to Gadsden, Nashville, Chattanooga and St. Louis to Chattanooga and the Western & Atlantic, 828 miles.

12. The Illinois Central to Jackson, Tennessee, and the N. C. & St. L., 882 miles. Knott's testimony, pp. 88 and 89.

The Illinois Central and the New Orleans and the Northeastern Railroads actively solicit and compete for Atlanta business from New Orleans. Ibid, 89.

No such competition exists at LaGrange, but LaGrange gets the benefit of the competition to Atlanta. Ibid, 89.

Respectfully submitted,

ED. BAXTER,
Solicitor for Defendants.

(Indorsed): United States Circuit Court, Southern District of Alabama. Number 207. In Equity. Interstate Commerce Commission versus Louisville & Nashville Railroad Company, et al. Proposed findings of fact filed by defendants before the I. C. C. in the case of Calloway vs. L. & N. R. R. Co., et al., and filed in this cause by defendants. Filed November the 25th, A. D. 1898. Richard Jones, Clerk.

235 MOTION BY COMPLAINANT TO STRIKE FROM THE FILE THE PROPOSED FINDING OF FACTS FILED BY THE DEFENDANTS BEFORE THE COMMISSION.

Circuit Court of the United States for the Southern District of Alabama.

The Interstate Commerce Commission
No. 207. vs. In Equity.
The Louisville & Nashville Railroad Co., Western Railway of Alabama and the Atlanta & West Point Railroad Company.

Now come the Interstate Commerce Commission, by their attorneys, and move the Court to strike from the files the paper filed by the defendants, entitled "Findings of Fact proposed by the defendants," and filed in the cause on November 25th, 1898, upon the following grounds, to-wit:

1. They are strictly exparte, from the carriers' standpoint alone.

2. They are based on the testimony taken before the Commission, which is only a part of the testimony in the case, the bulk of the testimony being taken before the Court.

3. They are neither pleadings nor evidence.

4. They are not properly a part of the record in the case before the Court, and can only properly be brought to the attention of the Court as a part of the argument in behalf of the carriers.

5. They are only proposed findings of facts and were not adopted by the Commission.

6. The Commission found a different or contrary state of facts, and section 16 of the law provides that on the hearing of the cause before the Court the "Findings of facts of the Commission shall be prima facie evidence of the matters therein stated."

M. D. WICKERSHAM,
U. S. Atty., Sou. Dist. Ala.
L. A. SHAVER,
Solicitor Int. Com. Coms., for the Complainants.

Filed June 15th, 1899, and entered on the motion docket.
RICHD JONES, Clerk.

AGREEMENT AS TO REVENUE PER TON PER MILE ON ROADS IN THE UNITED STATES.

In the Circuit Court of the United States for the Southern District of Alabama.

The Interstate Commerce Commission
No. 207. vs. In Equity.
The Louisville & Nashville Railroad Company, The Western Railway of Alabama and the Atlanta & West Point Railroad Co.

It is stipulated between counsel for the complainant and counsel for the defendants in the above named case that
236 the annexed statement of revenue per ton per mile may be used as evidence in behalf of complainant in said cause, subject to exceptions as to relevancy and competency.

This statement is offered by complainant as showing, or tending to show, by comparision of the data therein with the rates per ton per mile under the rates from New Orleans to La-Grange, that the latter rates are excessive.

May 11th, 1899.

L. A. SHAVER,
Counsel for Complainant.
ED. BAXTER,
Counsel for Defendants, as of Record.

Revenue per ton per mile on roads in the United States for the years from 1890 to 1897, both inclusive.

Years	1890	1891	1892	1893	1894	1895	1896	1897
Revenue per ton per mile	Cts. .941	Cts. .895	Cts. .898	Cts. .878	Cts. .860	Cts. .839	Cts. .806	Cts. .798

Revenue per ton per mile for the year of 1897 of roads in West Virginia, Virginia, North Carolina and South Carolina, .648 cents.

Revenue per ton per mile for the year 1897 of roads in Kentucky, Tennessee, Mississippi, Alabama, Georgia and Florida, .864 cents.

Filed May 17th, 1899. RICHARD JONES, Clerk.

AGREEMENT AS TO STANDARD FREIGHT TARIFF CLASSES ESTABLISHED BY THE RAILROAD COMMISSION OF GEORGIA.

In the Circuit Court of the United States, Southern District of Alabama.

The Interstate Commerce Commission
No. 207. vs. In Equity.
The Louisville & Nashville Railroad Co., The Western Railway of Alabama and the Atlanta & West Point Railroad Company.

Stipulation.

In the above entitled cause it is agreed by counsel for the complainant and counsel for the defendants that the annexed statement of distance class rates are the standard freight tariff class rates for the distances named, as established by the Railroad Commission of Georgia, and as set forth on page 50 of the Twenty-sixth Annual Report of that Commission for the year from October 15, 1897, to October 15, 1898, and that the same may be used in evidence on the hearing of said cause, subject to exceptions as to relevancy and competency.

It is further agreed that the Atlanta & West Point Railroad is allowed to add ten per cent to said rates on all the classes named in the annexed statement, except classes C, D, and F, and that class C embraces rice.

L. A. SHAVER,
Counsel for the Complainant.
ED. BAXTER,
Counsel for the Defendants, as of Record.

37 STANDARD FREIGHT TARIFF—CLASSES.

Distance Miles	Per 100 Pounds. 1 Cts.	2 Cts.	3 Cts.	4 Cts.	5 Cts.	6 Cts.	A Cts.	B Cts.	C Cts.	D Cts.	E Cts.	Per Bbl. F Cts.	Per 100 Lbs. G Cts.	Per 100 Lbs. H Cts.
5	12	11	10	8	7	6	6	6	4½	3½	7	9	2½	8
10	16	14	13	10	9	8	8	8	5½	5	9	11½	3¼	10
15	18	16	15	12	11	9	9	9	6	5½	11	12½	3¾	12
20	20	18	16	14	12	10	10	10	7	6	12	14	5	14
25	22	20	18	16	13	11	11	11	7½	6½	13	15	5½	16
30	24	21	19	17	14	11	11	11	7½	6½	14	15	6	17
35	26	23	21	19	15	12	12	12	8	7½	15	16½	6¼	19
40	27	24	22	20	16	12	12	12	8	7½	16	16½	6½	20
45	29	26	24	21	17	13	13	13	8½	8	17	17½	6¾	21
50	30	27	25	22	18	13	13	13	8½	8	18	17½	7	22
55	32	29	26	23	19	14	14	14	9	8½	19	18	7	23
60	33	30	27	24	19	14	14	14	9	8½	19	18	7¼	24
65	35	32	28	25	20	15	15	15	9½	9	20	19	7¼	25
70	36	33	29	26	20	15	15	15	9½	9	20	19	7½	26
75	38	35	30	27	21	16	16	16	10	9½	21	20	7½	27
80	39	36	31	28	21	16	16	16	10	9½	21	20	7½	28
85	41	37	32	29	22	17	17	17	11	10	22	21½	7½	29
90	42	38	33	29	22	17	17	17	11	10	22	21½	8	29
95	44	39	34	30	23	18	18	18	11½	11	23	23	8	30
100	45	40	35	30	23	18	18	18	11½	11	23	23	8¼	30
110	48	42	37	31	24	19	19	19	12	11	24	23	8½	31
120	51	44	39	32	25	20	20	20	13	12	25	24	8½	32
130	54	46	41	33	26	21	21	21	13	12	26	25	8¾	33
140	57	48	43	34	27	22	22	22	13	13	27	26	9	34
150	60	50	45	35	28	23	23	23	14	13	28	28	9	35
160	62	52	46	36	29	24	24	24	14	13	29	29	9¼	36
170	64	54	47	37	30	25	25	25	15	14	30	31	9¼	37
180	66	56	48	38	31	26	26	26	15	14	31	31	9½	38
190	68	58	49	39	32	27	27	27	16	15	32	33	9½	39
200	70	60	50	40	32	27	27	27	16	15½	32	33	9¾	40
210	71	62	51	41	33	28	28	28	17	16	33	34	9¾	41
220	72	64	52	42	33	28	28	28	17	16	33	34	10	42
230	73	66	53	43	34	29	29	29	18	17	34	36	10¼	43
240	74	68	54	44	34	29	29	29	18	17	34	36	10½	44
250	75	70	55	45	35	30	30	30	19	18	35	38	10½	45
260	76	71	56	46	35	30	30	30	19	18	35	38	10½	46
270	77	71	56	46	36	31	31	31	20	19	36	40	10½	46
280	78	72	57	47	36	32	32	32	20	19	36	40	10½	47
290	79	72	57	47	37	32	32	32	21	19	37	42	10½	47
300	80	73	58	48	38	33	33	33	21	19	38	42	11	48
310	81	73	58	48	38	33	33	33	21	19	38	42	11	48

238 AGREEMENT AS TO LOCAL DISTANCE TARIFF OF THE I. C. R. R. CO. AND THE SOUTHERN RAILWAY CO., ETC.

Filed June the 19th, 1899. RICHARD JONES, Clerk.

In the Circuit Court of the United States for the Southern District of Alabama.

The Interstate Commerce Commission

No. 207. vs. In Equity.

Louisville & Nashville Railroad Co., Western Railway of Alabama and the Atlanta & West Point Railroad Co.

Stipulation.

In the above entitled cause it is stipulated between counsel for the complainant and counsel for the defendants, that under the local distance tariff of the Illinois Central Railroad Co., (Southern Lines), I. C. C. No. B. 316, issued May 18, 1897, and effective June 1, 1897, the class rates in cents per 100 pounds for the distance of 425 miles, are as follows:

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1	2	3	4	5	6	A		B			C						Per Bbl.	
						C.	L.	L.	C.	L.	C.	L.	L.	C.	L.	C.	L.		
90	72	59	50	43	38	38	43		40		45		31	36				

D				E		H		F			
C.	L.	L.	C.	L.				C.	L.	L.	C.	L.
27		32			43		59	59		69		

It is further stipulated that under local freight tariff No. 1047 W. S., of the Southern Railway (Western System), I. C. C., 223, effective Feby. 18, 1895, applying on business within the States of Tennessee and Alabama, and on interstate traffic between stations in the States of Tennessee, Georgia, Alabama and Mississippi, that the following are the class rates for a distance of over 300 miles:

												Per Bbl.
1	2	3	4	5	6	A	B	C	D	E	H	F
103	88	77	55	52	42	43	44	35	32	52	55	70

It is further stipulated that under Joint Freight Tariff of the Southern Railway Company, I. C. C. No. 2910, issued March 2, 1898, and effective March 5, 1898, the class rates for a distance of 430 miles and over 420 miles, are as follows:

											Per Bbl.
1	2	3	4	5	6	A	B	C	D	E	F
94	87	74	60	50	40	30	38	32	27	48	58

It is agreed that the foregoing may be used in evidence in behalf of the complainant, subject to all exceptions as to relevancy or competency.

All formal objections are waived.

L. A. SHAVER,
Counsel for complainant,
ED BAXTER,
Counsel for Defendants, as of record.

Filed June the 19th, 1899, RICHARD JONES, Clerk.

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239 AGREEMENT AS TO RULES GOVERNING THE TRANSPORTATION OF FREIGHT PRESCRIBED BY THE GEORGIA RAILROAD COMMISSION.

In the Circuit Court of the United States for the Southern District of Alabama.

The Interstate Commerce Commission
No. 207. vs. In Equity.
The Louisville & Nashville Railroad Co., The Western Railway of Alabama and the Atlanta & West Point Railroad Company.

Stipulation.

It is stipulated by counsel for the complainant and counsel for the defendants in the above entitled cause, that the following extracts from pages 34 and 38 of the twenty-sixth report of the Railroad Commission of Georgia, and will be found under head of "Rules Governing the Transportation of Freight," prescribed by said Railroad Commission.

This the 16th day of June, 1899.

ED. BAXTER, Solicitor for Defendants,
L. A. SHAVER, Solicitor for Complainant.

Rule No. 6, Last Paragraph, Page 34.

"But when there are between any two points in this state two or more competing roads not under the same management or in the same system; then the longer line or lines, in order to give said points the benefit of competition, may reduce the rates between the said two points below the Standard Tariff without making a corresponding reduction at all stations along the lines of the said road; or when a rate on cotton is made to a

seaport out of the state, which is less than the rate from the same point to the Georgia ports, the railroads shall be authorized to meet the said competitive rate in like manner, as aforesaid; Provided, that before taking effect, the proposed change of rates shall be submitted to and approved by the Commission."

Rule 30; Page 38.

"On shipments of freight not governed by Rule No. 1, originating and terminating in this state, which shall pass over the whole or portions of two or more roads, not under the same control, the maximum rate charged on such shipments shall not be greater than the sum of the local rates on such freights, less ten (10) per cent. for the distance hauled over each road. The total rate thus ascertained on such freights from the point of shipment to the point of destination shall be divided into such proportions between the roads over which such freights pass, so as to give each road interested in the shipment its local rate, less ten (10) per cent. for the distance such shipment is hauled."

240 "Nothing in this rule shall be construed to prevent the total of any joint rate made under this rule from being divided into such proportions between the roads interested in the same as they may agree upon, but a failure to so agree between the roads interested shall in no way affect the total joint rate to be charged and collected on, or work delay in the transportation of such freight or be a subject of appeal to the Commission by the roads at interest."

Filed June the 20th, A. D. 1899, RICHARD JONES, Clerk.

AGREEMENT TO PUBLISH ALL TESTIMONY ON FILE IN THE CAUSE.

United States Circuit Court, Southern District of Alabama.

The Interstate Commerce Commission

No. 207. vs. In Equity.

The Louisville Nashville R. R. Co., et al.

It is agreed in the above entitled cause between the counsel for the complainant and counsel for the defendants, that the testimony taken therein be forthwith published.

This the 19th day of June, A. D. 1899.

L. A. SHAVER, Counsel for the Complainant.

ED. BAXTER, Counsel for the Defendants.

Filed this the 19th day of June, A. D. 1899, and all the testimony on file in the cause published in accordance herewith.
RICHARD JONES, Clerk.

TESTIMONY ON THE PART OF THE COMPLAINANT, THE INTERSTATE COMMERCE COMMISSION.

241 DEPOSITION OF JESSE M. SMITH.

In the Circuit Court of the United States for the Southern District of Alabama.

The Interstate Commerce Commission
No. 207. vs. In Equity.
The Louisville & Nashville Railroad Company, The Western Railway of Alabama, and the Atlanta & West Point Railroad Company.

Direct Interrogatories and Answers.

Deposition of JESSE M. SMITH, a witness for the complainant in the above entitled cause, taken under stipulation hereto annexed. The said witness, Jesse M. Smith, having been duly sworn to speak the truth, the whole truth and nothing but the truth, doth depose as follows:

Interrogatory No. 1. What is your name, residence and occupation?

Answer. My name is Jesse M. Smith, Washington, D. C., and I am auditor of the Interstate Commerce Commission.

Int. No. 2. If you say you are auditor of the Interstate Commerce Commission, state how long you have occupied that position and what, if any, was your previous position with the Commission and how long you occupied that?

A. I have occupied that position since July 1st, 1895; from January 1st, 1888, to July 1st, 1895, I was assistant auditor of the Commission.

Int. No. 3. In what business were you engaged before entering into the service of the Commission? How long were you so engaged, and in what part of the country?

A. I was engaged in railroad work for some fourteen years, prior to entering the service of the Commission, most of the time in the general freight department of the Louisville & Nashville Railroad, at Louisville, Kentucky, and Montgomery, Alabama.

242 Int. No. 4. Are schedules of rates, fares and charges applying on interstate traffic required to be filed by carriers with the Interstate Commerce Commission? Are they not filed in the office of the auditor of the Commission, and is it not one of your duties as auditor to examine such tariffs?

A. Common carriers are required to file with the Commission all schedules of rates, fares and charges applying on interstate traffic. All of such schedules are placed on file in the office of the auditor of the Commission, and it is one of the duties of the auditor, with the assistance of the clerical force in his charge, to examine, as far as practicable, all schedules of rates, fares and charges filed in compliance with section six of the Act to regulate commerce, for the purpose of determining whether such schedules are in accordance with the requirements of the law and the orders of the Commission.

Int. No. 5. From your examination of such schedules of rates, fares and charges, in what section of the United States does the practice of making the greater charge for the shorter than the longer haul over the same line in the same direction, the shorter haul being included in the longer, prevail to the greatest extent?

A. From the large number of tariffs examined since the beginning of my service with the Commission, applying in all sections of the country, I am of the opinion that the practice of making the greater charge for the shorter than for the longer haul, over the same line in the same direction, the shorter being included in the longer, prevails to the greatest extent in the territory east of the Mississippi river and south of the Ohio and Potomac rivers.

Int. No. 6. If you say that this practice prevails to the greatest extent in the territory east of the Mississippi river and south of the Ohio and Potomac rivers, state whether or not this practice is the rule in that territory in cases of transportation from points outside that territory, through

243 shorter distance local points to longer distance competitive points in that territory?

A. I am of the opinion that the practice referred to prevails as a rule in cases of transportation from points outside that territory through shorter distance local points to longer distance competitive points in that territory, though there are no doubt some exceptions.

Int. No. 7. How long has this practice existed in that territory? Was it or not in existence in the year 1887, when the act to regulate commerce became a law, and prior thereto?

A. To the best of my recollection this practice has existed in that territory to a greater or less extent since the beginning

of my railroad service. It was in existence in the year 1887, and, as above indicated, prior thereto.

Int. No. 8. Did, or did not, this practice in 1887 and prior thereto, prevail to a greater extent in that territory than in any other section of the United States?

A. Prior to the beginning of my service with the Commission, January 1, 1888, I was not very familiar with the conditions prevailing in sections of the country other than the territory east of the Mississippi and south of the Ohio and Potomac rivers. I am, therefore, unable to say to what extent the practice in question prevailed in other sections of the country.

Int. No. 9. Has the greater charge for the shorter than the longer haul over the same line in the same direction, the shorter haul being included in the longer, ever to your personal knowledge been made in the territory east of the Mississippi river, and south of the Ohio and Potomac rivers, except in cases of competition in transportation to the longer distance
244 point? In other words, so far as your personal knowledge extends, has not competition in transportation been the sole ground or excuse for such greater charge?

A. I have no personal knowledge of any case where the greater charge for the shorter than for the longer haul, over the same line, in the same direction, the shorter being included in the longer, has been made in the territory described, except in cases where competition in transportation existed at the longer distance point. I believe the lower charge to the longer distance point has, in practically all cases, been made on the ground of competition in transportation to such longer distance point, either direct competition in transportation from and to the same points, or competition with carriers operating from other markets to same points of destination.

Int. No. 10. What is the general rule in making joint through rates over through lines composed of several connecting carriers? Are those rates made up of the sum of the local rates of the several carriers, or are they less than the sum of the local rates? What is the rule on this subject?

A. Joint through rates, applying over two or more roads, are made by agreement or understanding between the interested lines, and are less than the sum of the local rates of such lines.

Int. No. 11. Does the practice of making the rate to a shorter distance local station the through rate to the longer distance competitive point beyond plus the local rate back to such shorter distance local station, prevail to any material extent elsewhere in the United States than in the territory east of the Mississippi and south of the Ohio and Potomac rivers? What is

the rule on this subject in other sections of the coun-
245 try?

A. The practice referred to does not prevail to any material extent outside the territory east of the Mississippi and south of the Ohio and Potomac rivers. There are some instances of rates made in this manner in the territory west of the Mississippi river, but these are exceptions rather than the rule. In the territory north of the Ohio and Potomac rivers and east of the Mississippi river I can recall no instance of rates being made in this manner. In the territory south of the Ohio and Potomac rivers this practice prevails to such an extent as to be regarded as the rule in making rates from points outside the territory to local points located between two competitive points in that territory.

Int. No. 12. What is a local haul as distinguished from a through haul? Is a local rate intended to cover the cost of two terminals?

A. Literally speaking a local haul is a haul between two points on the same road. This term, however, is often used, I believe in reference to the transportation of non-competitive traffic between points on the same road, as distinguished from the movement of traffic between competitive terminal points on the same road or over two or more roads. Local rates are understood to include ordinary expenses at point of shipment and destination.

Int. No. 13. Are local rates higher or lower in proportion to distance than through rates? If you say local rates are higher in proportion to distance, state why this is so.

A. Local rates, i. e., rates applying between strictly local points, are usually higher in proportion to distance than joint through rates. This is partly due, no doubt, to the fact that greater expense attaches to the transportation and handling of local traffic. Another reason is the absence of competition, which usually results in rates being forced down.
246 Between local points not affected by competition of other roads or markets there is nothing to prevent a carrier from fixing and maintaining rates as high as the traffic will bear, if it so desires.

Int. No. 14. State the rates on class goods, and also on sugar, molasses and rice, now in force from New Orleans to Montgomery, Opelika, West Point, LaGrange, Hogansville, Newnan, Palmetto, Fairburn and Atlanta.

A. The present class rates, also the rates on sugar, molasses and rice, from New Orleans to points named, are shown in Statement No. 1, hereto attached.

Int. No. 15. Under what classification are the class rates

called for in the preceding interrogatory made, and what is the minimum carload allowed under that classification?

A. The class rates given in the answer to the preceding interrogatory are governed by the Southern Freight Classification, which provides that unless otherwise specified in the classification, the minimum carload weight of all articles, loaded in cars of 36 feet in length or less, shall be 24,000 pounds, or twelve tons where the rate applies per net or gross ton. For cars which exceed 36 feet in length minimum carload weights are provided in proportion to the length of the car.

Int. No. 16. State the excess of those class rates from New Orleans to LaGrange, and also of the rates on sugar, molasses and rice from New Orleans to LaGrange, over such rates to Hogansville, Newnan, Palmetto, Fairburn and Atlanta, in cents per hundred pounds.

The excess of the class rates, also rates on sugar, molasses and rice from New Orleans to LaGrange over the rates on same classes and commodities to Hogansville, Newnan, Palmetto, Fairburn and Atlanta are shown in Statement No. 2, hereto attached.

247 Int. No. 17. State the excess per minimum carload of 24000 pounds of the class rates and of the rates on sugar, molasses and rice from New Orleans to LaGrange, over such rates from New Orleans to Hogansville, Newnan, Palmetto, Fairburn and Atlanta.

A. The excess per minimum carload of 24000 pounds of the class rates and of the rates on sugar, molasses and rice from New Orleans to LaGrange, over such rates from New Orleans to Hogansville, Newnan, Palmetto, Fairburn and Atlanta, are shown in statement No. 3, hereto attached.

Int. No. 18. State the class rates, and the rates on sugar, molasses and rice, to Opelika, West Point, LaGrange, Hogansville, Newnan, Palmetto, Fairburn and Atlanta, from Montgomery, Alabama.

A. The present class rates, and the rates on sugar, molasses and rice from Montgomery, Alabama, to the points named are shown in statement No. 4, hereto attached.

Int. No. 19. State how the class rates called for in the preceding interrogatory from Montgomery to LaGrange are made up? Are they not made up of the rates from Montgomery to Opelika, plus the rate from Opelika to West Point, plus the rate from West Point to LaGrange?

A. There being no published through rates from Montgomery to LaGrange, the class rates given in the answer to the preceding interrogatory are made by combination of the class rates from Montgomery to West Point or Atlanta, and locals

from those points to destination, whichever makes the lowest through rates, it being understood that the lowest combination makes the through rate.

Int No. 20. State how the rates on sugar, molasses and rice from Montgomery to LaGrange are made up.

248 A. The rates on sugar, molasses and rice from Montgomery to LaGrange as given in answer to interrogatory No. 18, are made by combination of the class rates applying on those commodities from Montgomery to West Point or Atlanta and the class rates applying on same commodities from West Point or Atlanta to destination, whichever gives the lowest through rate.

Int. No. 21. State the rates on sugar, molasses and rice from New Orleans to Atlanta and LaGrange which were in force in April, 1896, and which are now in force, in carloads and less than carloads.

A. The rates applying on sugar, molasses and rice from New Orleans to Atlanta and LaGrange which were in force in April, 1896, also the rates now in force, in carloads and less than carloads, are shown in Statement No. 5, hereto attached.

Int. No. 22. State the class rates and the rates on sugar, molasses and rice from Atlanta to Fairburn, Palmetto, Newnan, Hogansville and LaGrange.

A. The class rates, and the rates on sugar, molasses and rice from Atlanta to points named are shown in Statement No. 6, hereto attached.

Int. No. 23. Upon what other road besides the Atlanta & West Point road is LaGrange situated? Are Hogansville, Palmetto, and Fairburn on any other road than the Atlanta & West Point? Upon what other road besides the Atlanta & West Point is Newnan situated?

A. LaGrange, Georgia, is located on the Atlanta & West Point Railroad and the Macon & Birmingham Railway. Hogansville, Palmetto and Fairburn are not on any other road than the Atlanta & West Point Railroad. Newnan is located on Central of Georgia Railway as well as on the Atlanta & West Point Railroad.

249 Int. No. 24. At what points on its line does the Macon & Birmingham road meet other roads? Name the different roads which reach the Macon & Birmingham road at such points.

A. The Macon & Birmingham Railway connects at Sofkee with the Georgia Southern & Florida Railway; at Culloden, Yatesville and Woodbury with the Southern Railway; at Thomaston and Harris City with the Central of Georgia Railway, and at LaGrange with the Atlanta & West Point Railroad.

Int. No. 25. Name the principal, shortest and most available roads or lines extending from Macon to Augusta, Charleston, Savannah and Brunswick, and give the distances from LaGrange via the Macon & Birmingham road, and via the roads from Macon on to Augusta, Charleston and Brunswick.

A. The shortest line from Macon to Augusta is via the Georgia Railroad; from Macon to Charleston, via the Georgia Railroad to Augusta and thence via the South Carolina & Georgia Railroad; from Macon to Savannah, via the Central of Georgia Railway, and from Macon to Brunswick, via the Southern Railway.

The distances from LaGrange to these points, via the Macon & Birmingham Railway and via the routes mentioned from Macon, are as follows:

	Miles.	Total Miles.
LaGrange to Charleston.		
LaGrange to Macon (Macon & Birmingham Ry.)	105	
Macon to Augusta (Georgia R. R.).....	125	
Augusta to Charleston (South Carolina & Georgia Ry.)....	138	368
LaGrange to Savannah.		
LaGrange to Macon (Macon & Birmingham Ry.)	105	
Macon to Savannah (Central of Georgia Ry.)..	191	296
LaGrange to Brunswick.		
LaGrange to Macon (Memphis & Birmingham Ry.)....	105	
Macon to Brunswick (Southern Ry.).....	190	295

250 Int. No. 26. Name the lines which can be formed via the Louisville & Nashville Railroad, the New Orleans & Northeastern and the Illinois Central Railroad, as initial carriers, from New Orleans to LaGrange, and via either the Macon & Birmingham or the Atlanta & West Point roads as terminal carriers, except such as would pass through Atlanta before reaching LaGrange. Give the distance by each of these lines from New Orleans to LaGrange.

A. The lines which can be formed from New Orleans to LaGrange, via the initial and terminal roads mentioned, except such as would pass through Atlanta before reaching LaGrange, and the distance via each through route, are as follows:

New Orleans to LaGrange.	Miles.	Total Miles.
Louisville & Nashville R. R. to River Junction	407	
Plant Lines to Albany	116	
Central of Georgia Ry. to Macon	107	
Macon & Birmingham Ry. to LaGrange	105	735
Louisville & Nashville R. R. to River Junction	407	
Plant Lines to Albany	116	
Central of Georgia Ry. to Fort Valley	78	
Southern Railway to Yatesville	34	
Macon & Birmingham Ry. to LaGrange	61	696
Louisville & Nashville R. R. to Montgomery	321	
Central of Georgia Ry. to Macon	196	
Macon & Birmingham Ry. to LaGrange	105	622
Louisville & Nashville R. R. to Montgomery	321	
Central of Georgia Ry. to Fort Valley	167	
Southern Railway to Yatesville	34	
Macon & Birmingham Ry. to LaGrange	61	583
Louisville & Nashville R. R. to Montgomery	321	
Central of Georgia Ry. to Harris City	143	
Macon & Birmingham Ry. to LaGrange	22	486
Shortest Route.		
Louisville & Nashville R. R. to Montgomery	321	
Western of Alabama Ry. to West Point	88	
Atlanta & West Point R. R. to LaGrange	16	425
New Orleans & Northeastern R. R. to Meridian	196	
Southern Ry. to Selma	103	
Western of Alabama Ry. to West Point	138	
Atlanta & West Point R. R. to LaGrange	16	453

2444

		Miles.	Total Miles.
	New Orleans to LaGrange.		
251	New Orleans & Northeastern R. R. to Meridian	196	
	Alabama Great Southern Ry. to Birmingham	153	
	Central of Georgia Ry. to Opelika	129	
	Western of Alabama Ry. to West Point	22	
	Atlanta & West Point R. R. to LaGrange	16	516
	Illinois Central R. R. to Jackson	183	
	Alabama & Vicksburg R. R. to Meridian	96	
	Southern Ry. to Selma	103	
	Western Ry. of Alabama to West Point	138	
	Atlanta & West Point R. R. to LaGrange	16	536
	Illinois Central R. R. to Jackson	183	
	Alabama & Vicksburg R. R. to Meridian	96	
	Alabama Great Southern Ry. to Birmingham	153	
	Central of Georgia Ry. to Opelika	129	
	Western Ry. of Alabama to West Point	22	
	Atlanta & West Point R. R. to LaGrange	16	599
	Illinois Central R. R. to Winona	271	
	Southern Ry. to Birmingham	208	
	Central of Georgia Ry. to Opelika	129	
	Western Ry. of Alabama to West Point	22	
	Atlanta & West Point R. R. to LaGrange	16	646

Int. No. 27. Name the principal all rail line, or two of the principal all rail lines, from Baltimore, Philadelphia and New York to Atlanta.

A. The most direct all-rail route from Baltimore, Philadelphia and New York to Atlanta is via the Pennsylvania Railroad to Alexandria, Va., and thence via the Southern Railway to Atlanta. Another all rail route from New York and Philadelphia is via the Pennsylvania Railroad to Harrisburg, Pa., the Cumberland Valley Railroad to Hagerstown, Md., the Norfolk & Western Railway to Bristol, Tenn., and the Southern Railway to Atlanta. Another all rail route from Baltimore to Atlanta is via the Baltimore & Ohio Railroad to Alexandria, Va., and Southern Railway to Atlanta.

Int. No. 28. Name the principal rail and water line, or two of the principal rail and water lines, from Baltimore, Philadelphia and New York, via Norfolk, Charleston and Savannah, to Atlanta, and give the distance by such lines from
252 Norfolk, Charleston and Savannah to Atlanta.

A. One of the principal rail and water lines from

Baltimore to Atlanta is the Baltimore Steam Packet Company, in connection with the Seaboard Air Line, via Norfolk. Another line is the Baltimore, Chesapeake & Richmond Steamboat Company to Norfolk, and the Southern Railway from Norfolk to Atlanta. The Clyde Steamship Line operates between Philadelphia and Norfolk, and in connection with the Seaboard Air Line or Southern Railway at that point forms through lines to Atlanta. From New York the Old Dominion Steamship Company, in connection with the Seaboard Air Line or the Southern Railway forms through lines to Atlanta via Norfolk.

The only steamer line from any eastern port to Charleston is the Clyde Line. This line operates between New York and Charleston and, in connection with the South Carolina & Georgia Railroad and the Georgia Railroad, forms a through water and rail line between New York and Atlanta. The Ocean Steamship Company, in connection with the Central of Georgia Railway, forms a through water and rail route between New York and Atlanta via Savannah. The Merchants & Miners' Transportation Company, in connection with the Central of Georgia Railway, forms a through line between Baltimore and Atlanta, via Savannah. There appears to be no steamship line operating between Philadelphia and Savannah.

The distance from Norfolk to Atlanta is 597 miles. From Charleston to Atlanta the distance is 309 miles, and from Savannah to same point 294 miles.

Int. No. 29. Name the principal line, or two of the principal lines from Chicago, and from Cincinnati, to Atlanta.

A. The most direct route, Chicago to Atlanta, is
253 via the Chicago & Eastern Illinois Railroad to Evansville, Ind., Louisville & Nashville Railroad to Nashville, and the Nashville, Chattanooga and St. Louis Railway thence to Atlanta. Another route is via the Chicago, Indianapolis and Louisville Railway to Louisville, the Louisville & Nashville Railroad to Nashville, and the Nashville, Chattanooga & St. Louis Railway, Nashville to Atlanta. Another important route is via the Cleveland, Cincinnati and St. Louis Railway Chicago to Cincinnati, Cincinnati, New Orleans and Texas Pacific Railway to Chattanooga, and Western and Atlantic Railroad or Southern Railway to Atlanta. The most direct line from Cincinnati to Atlanta is via the Cincinnati, New Orleans and Texas Pacific Railway to Chattanooga and Western & Atlantic Railroad Chattanooga to Atlanta.

Int. No. 30. Is the line from New Orleans through La-Grange to Atlanta the only line that makes the rates to shorter distance intermediate points the sum of the through rates to Atlanta plus the locals back? If not, what other lines into Atlanta make rates to intermediate local stations in that way?

A. The line from New Orleans to Atlanta through LaGrange is not the only line which makes the rates to shorter distance intermediate points the sum of the through rates to Atlanta plus the locals back. Rates from New Orleans to points on the Southern Railway (Georgia Pacific Division) near Atlanta, are made in this manner. Rates from Ohio river points, Nashville and Memphis, to certain stations on the Western & Atlantic Railroad between Chattanooga and Atlanta, are made the sum of the published through rates to Atlanta and locals back. There are probably other instances where rates to points intermediate to Atlanta are made in this manner.

254 Int. No. 31. Cannot all these lines to Atlanta be also formed to LaGrange with the Atlanta & West Point Railroad or the Macon & Birmingham Railroad as terminal carrier?

A. All of the lines to Atlanta could, I think, be used in forming through routes to LaGrange with the Atlanta & West Point Railroad or the Macon & Birmingham Railway as the terminal carrier.

Int. No. 32. What is the standard freight tariff established by the Georgia Railroad Commission on the different classes for a distance of 70 miles? What per cent is the Atlanta & West Point Railroad allowed by the Georgia Railroad Commission to add to these standard rates, and what do they become for the distance of 70 miles with that per cent added? Is there any material distinction between the Georgia Railroad Commission classification and that of the Southeastern Freight Association?

A. The standard freight tariff established by the Georgia Railroad Commission names rates on the regular classes, numbered 1 to 6, inclusive, for a distance of 70 miles, in cents per hundred pounds, as follows:

Classes.

1	2	3	4	5	6
36	33	29	26	20	15

The Atlanta & West Point Railroad is allowed by the Georgia Railroad Commission to charge ten per cent in addition to the rates as above named. With the percentage added the rates in cents per hundred pounds are as follows:

Classes.

1	2	3	4	5	6
39.6	36.3	31.9	28.6	22	16.5

From such comparison as I have been able to make of the Southern Freight classification with the classification of the Georgia Railroad Commission, I am of the opinion that there is no material difference as to articles which are included in the regular classes, one to six, inclusive; sugar, for instance, is classified the same in both classifications—in barrels or
255 hogsheads, 6th class. There are quite a number of articles of low grade freight which was not given a class in the Southern Freight Classification, but are classified in the Georgia Railroad Commission Classification. There are also a number of articles in Class "A" in the Southern Freight Classification which are given a lower freight classification in the State Classification.

Int. No. 33. Were not the rates from New Orleans, and from the eastern seaboard, and from Ohio and Mississippi river points, to Atlanta, fixed by agreement between the carriers, parties thereto, as members of the Southern Railway & Steamship Association, during the existence of that Association?

A. Rates were published by the Southern Railway & Steamship Association from eastern seaboard cities, Ohio river points, Memphis and, at times, from New Orleans, to Atlanta. It is my understanding that all rates published by the association were made by agreement or understanding between the carriers, members of the association.

Int. No. 34. When, or about what time, was that association formed, and when did it cease to exist?

A. The Southern Railway & Steamship Association was organized in 1875, (am unable to give the exact date) and ceased to exist under that name about October 18th, 1895.

256 Int. No. 35. What associations have succeeded the Southern Railway & Steamship Association, and are not the rates from New Orleans and the eastern seaboard and Ohio and Mississippi river points to Atlanta still fixed by agreement between the carriers, parties thereto as members of such associations?

A. The Southern States Freight Association succeeded the Southern Railway & Steamship Association, and continued in existence until May 1st, 1897, when it was reorganized under the name of the Southeastern Freight Association, which is still in existence.

Rates from eastern seaboard, Ohio river points and from Memphis, to Atlanta, have been regularly published by the associations mentioned. Rates from New Orleans to Atlanta have at times been published by these associations. Rates from the points indicated to Atlanta, it is understood, were fixed by

agreement or understanding between the carriers, members of the Southern States Freight Association during the existence of that association. While the articles of association of the Southeastern Freight Association give the members thereof the right of independent action, the rates from the points above indicated to Atlanta and other common points in that territory remain practically as fixed by the previous associations.

Int. No. 36. Does not the same classification apply to rates from New Orleans to LaGrange as applies to rates from New Orleans to Atlanta?

A. The rates from New Orleans to LaGrange are governed by the same classification as the rates New Orleans to Atlanta.

257 Int. No. 37. Is not the quantity or tonnage of the shipments; that is, whether or not the goods are shipped in carloads or less than carloads, taken in consideration in establishing this classification? In other words, are not certain goods placed in one class when they are hauled in carloads, and in another and higher class when they are hauled in less than carloads, and does not this apply equally to the class rates from New Orleans to both LaGrange and Atlanta?

A. In this Classification a great many articles are placed in a lower class when shipped in carload quantities than when shipped in less than carload quantities, and this applies equally to the class rates from New Orleans to both LaGrange and Atlanta.

Int. No. 38. Do not the excesses of the class rates from New Orleans to LaGrange over the class rates from New Orleans to Atlanta apply to carload as well as less than carload shipments?

A. The excess of the class rates from New Orleans to LaGrange over the class rates from New Orleans to Atlanta applies to carload as well as less than carload shipments carried at the class rates.

Int. No. 39. Do you know or can you set forth any other matter or thing which may be a benefit or advantage to the parties at issue in this cause, or either of them, or that may be material to the subject of this your examination, or the matters in question in this cause? If yea, set forth the same fully and at large in your answer.

A. I can state nothing further which may be a benefit or advantage to the parties at issue in this cause.

JESSE M. SMITH.

258 STATEMENT NO 1 WITH DIRECT ANSWER NO. 14. (N

Interstate Commerce Commissio

Auditor's Office, May 13, 1899.

Statement showing present rates on Classes, Sugar, Molasses and Rice f

Rates

Taki

Rates in cents per 100 pounds.

From New Orleans, La., To	Classes.													Rate per Barrel.		Sugar in Barrels.		Sugar Bar	
	1	2	3	4	5	6	A	B	C	D	E	H	F	C. L.		L. C.	L.	C.	L.
Montgomery, Ala.	89	79	68	55	47	36	24	27	20	16	44	29	32	17		20		20	
Opelika, Ala.	103	88	77	64	52	42	24	33	26	22	46	51	44	20		23		23	
West Point, Ga.	131	114	101	84	69	55	37	48	35	30	64	61	61½	33		36		36	
LaGrange, Ga.	143	124	109	93	74	59	41	48	33½	29	66	74	59	37		40		40	
Hogansville, Ga.																			
Based on Atlanta.	103	88	77	64	52	42	24	31	24	20	44	49	40	20		23		...	
Local Beyond.	36½	33	29½	26½	21	15½	15½	15½	9	8½	21	26½	18	15½		15½		...	
Total Rate.	139½	121	106½	90½	73	57½	39½	46½	33	28½	65	75½	58	35½		38½		...	
Newnan, Ga.																			
Based on Atlanta.	103	88	77	64	52	42	24	31	24	20	44	49	40	20		23		...	
Local Beyond.	29½	26½	24	22	17½	13	13	13	8	7½	17½	22	16	13		13		...	
Total Rate.	132½	114½	101	86	69½	55	37	44	32	27½	61½	71	56	33		36		...	
Palmetto, Ga.																			
Based on Atlanta.	103	88	77	64	52	42	24	31	24	20	44	49	40	20		23		...	
Local Beyond.	24	22	20	17½	14½	12	12	12	7½	7	14½	17½	15	12		12		...	
Total Rate.	127	110	97	81½	66½	54	36	43	31½	27	58½	66½	55	32		35		...	
Fairburn, Ga.																			
Based on Atlanta.	103	88	77	64	52	42	24	31	24	20	44	49	40	20		23		...	
Local Beyond.	22	20	17½	15½	13	11	11	11	7	6½	13	15½	14	11		11		...	
Total Rate.	125	108	94½	79½	65	53	35	42	31	26½	57	64½	54	31		34		...	
Atlanta, Ga.	103	88	77	64	52	42	24	31	24	20	44	49	40	20		23		23	

ANSWER NO. 14. (NO. 1.)

ate Commerce Commission.

tor's Office, May 13, 1899.

igar, Molasses and Rice from New Orleans, La., to points shown below:

Rates in cents per hundred pounds.

Taking 6 class.

	Sugar in Barrels.		Sugar except in Barrels.		Molasses in Kegs.		Molasses in Bbls. or Hhds.		Rice in Barrels, any quantity	Rice in Kegs, any quantity
	C. L.	L. C. L.	C. L.	L. C. L.	C. L.	L. C. L.	C. L.	L. C. L.		
2	17	20	20	20	17	17	17	17	20	20
4	20	23	23	23	25	25	25	25	25	25
1½	33	36	36	36	45	45	38	38	36	36
0	37	40	40	40	57	57	37	37	34½	34½
0	20	23	...	...	25	25	25	25	25	25
8	15½	15½	...	...	26½	26½	11	11	9	29½
8	35½	38½	...	...	51½	51½	36	36	34	54½
0	20	23	...	...	25	25	25	25	25	25
3	13	13	...	...	22	22	9	9	8	24
3	33	36	...	...	47	47	34	34	33	49
0	20	23	...	...	25	25	25	25	25	25
5	12	12	...	...	17½	17½	7	7	7½	20
5	32	35	...	...	42½	42½	32	32	32½	45
0	20	23	...	...	25	25	25	25	25	25
4	11	11	...	...	15½	15½	6½	6½	7	17½
4	31	34	...	...	40½	40½	31½	31½	32	42½
0	20	23	23	23	25	25	25	25	25	25

Statement Showing the Excess of Class Rates, Rat
over the Rates to Hogansvill

From
New Orleans, La.,
To
LaGrange, Ga.
Higher than the rates to the following points, viz:

Rates in Cents per 100 Pounds

	Classes.											
	1	2	3	4	5	6	A	B	C	D	E	H
Hogansville, Ga. .	3½	3	2½	2½	1	1½	1½	1½	0½	0½	1	...
Newnan, Ga. .. .	10½	9½	8	7	4½	4	4	4	1½	1½	4½	3
Palmetto, Ga. ...	16	14	12	11½	7½	5	5	5	2	2	7½	7½
Fairburn, Ga. ...	18	16	14½	13½	9	6	6	6	2½	2½	9	9½
Atlanta, Ga.	40	36	32	29	22	17	17	17	9½	9	22	25

Statement Showing the Excess per car of 24,000 pounds of the Class Rates and

From
New Orleans, La.,
To
LaGrange, Ga.,
Higher than the rates to following points, viz:

	Classes.								
	1	2	3	4	5	6	A	B	C
Hogansville, Ga.. .	$ 8.40	7.20	6.00	6.00	2.40	3.60	3.60	3.60	1.20
Newnan, Ga... ...	25.20	22.80	19.20	16.80	10.80	9.60	9.60	9.60	3.60
Palmetto, Ga.. ...	38.40	33.60	28.80	27.60	18.90	12.00	12.00	12.00	4.80
Fairburn, Ga.	43.20	38.40	34.80	32.40	21.60	14.40	14.40	14.40	6.00
Atlanta, Ga.	96.00	86.40	76.80	69.60	52.80	40.80	40.80	40.80	22.80

STATEMENT NO. 2 WITH DIRECT ANSWER NO. 16 (NO. 2.)

Interstate Commerce Commission.
Auditor's Office, May 13, 1899.

...cess of Class Rates, Rates on Sugar, Molasses and Rice from New Orleans, La., to LaGrange, Ga., ...the Rates to Hogansville, Newnan, Palmetto, Fairburn and Atlanta, Ga.

...unds

Rates in Cents per 100 Pounds

						Taking 6 Class.								
								Sugar, except in Barrels.				Molasses in Bbls. or Hhds.		
B	C	D	E	H	F	Sugar in Barrels. C. L.	Sugar in Barrels. L. C. L.	C. L.	L. C. L.	Molasses in Kegs. C. L.	Molasses in Kegs. L. C. L.	C. L.	L. C. L.	Rice in Barrels. Any quantity.
1½	0½	0½	1	...	1	1½	1½	..	..	5½	5½	1	1	0½
4	1½	1½	4½	3	3	4	4	..	..	10	10	3	3	1½
5	2	2	7½	7½	4	5	5	..	..	14⅓	14½	5	5	2
6	2½	2½	9	9½	5	6	6	..	..	16½	16½	5½	5½	2½
17	9½	9	22	25	19	17	17	17	17	32	12	12	12	9½

260 STATEMENT NO. 3 WITH DIRECT ANSWER NO. 17. (NO. 3.)

Interstate Commerce Commission.
Auditor's Office, May 13, 1899.

...ds of the Class Rates and of the Rates on Sugar, Molasses and Rice from New Orleans, La., to LaGrange, over the Rates to Hogansville, Newnan, Palmetto, Fairburn and Atlanta, Ga.

Rates in Dollars and Cents per Car Load of 24,000 Pounds.

Classes.								Taking 6th Class Rates. Sugar, except in Barrels.								
								Sugar in Barrels.				Molasses in Kegs.		Molasses in Bbls. or Hhds.		
6	A	B	C	D	E	H	F	C. L.	L. C. L.	C. L.	L. C. L.	C. L.	L. C. L.	C. L.	L. C. L.	Rice in Barrels Any quantity.	Rice in Kegs. Any quantity.
3.60	3.60	3.60	1.20	1.20	2.40	....	2.40	3.60	3.60	....	....	13.20	13.20	2.40	2.40	1.20	48.00
9.60	9.60	9.60	3.60	3.60	10.80	7.20	7.20	9.60	9.60	....	....	24.00	24.00	7.20	7.20	3.60	37.20
12.00	12.00	12.00	4.80	4.80	18.00	18.00	9.60	12.00	12.00	....	....	34.80	34.80	12.00	12.00	4.80	27.60
14.40	14.40	14.40	6.00	6.00	21.60	22.80	12.00	14.40	14.40	....	....	39.60	39.60	13.20	13.20	6.00	19.20
40.80	40.80	40.80	22.80	21.60	52.80	60.00	45.60	40.80	40.80	40.80	40.80	76.80	76.80	28.80	28.80	22.80	22.80

261 STATEMENT NO. 4 WITH DIRECT ANSWER NO. 18. (NO. 4.)

Interstate Commerce Commission.
Auditor's Office, May 13, 1899.

Statement Showing Rates on Classes, Sugar, Molasses and Rice from Montgomery, Ala., to the following points, viz:

From Montgomery, Ala., To	Rates in Cents per hundred pounds. Classes. 1	2	3	4	5	6	A	B	C	D	E	H	Rates per Bbl. F	Rates in Cents per hundred pounds. Sugar, in Bbls. or Hhds. Any quantity.	Molasses, in Bbls. or Hhds. Any quantity.	Molasses in Kegs. Any quantity.	Rice in Bbls. Any quantity.	Rice in Kegs. Any quantity.
Opelika, Ala.	50	43	39	29	25	19	19	20	19	15	27	30	38	19	19	29	19	39
West Point, Ga.	55	47	42	32	26	21	21	23	21	17	29	32	40	21	21	32	21	42
LaGrange, Ga.																		
Based on West Point	55	47	42	32	26	21	21	23	21	17	29	32	40	21	21	32	21	42
Local Beyond	20	17½	16½	13	12	10	10	10	6½	5½	12	13	12½	10	6	13	6½	16½
Total Rate	75	64½	58½	45	38	31	31	33	27½	22½	41	45	52½	31	27	45	27½	58½
Hogansville, Ga.																		
Based on West Point	55	47	42	32	26	21	21	23	21	17	29	32	40	21	21	32	21	42
Local Beyond	26½	23	21	18½	15½	12	12	12	7½	7	15½	18½	15	12	7½	18½	7½	21
Total Rate	81½	70	63	50½	41½	33	33	35	28½	24	44½	50½	55	33	28½	50½	28½	63
Fairburn, Ga.																		
Based on West Point	55	47	42	32	26	21	21	23	21	17	29	32	40	21	21	32	21	42
Local Beyond	39½	36½	32	28½	22	16½	16½	16½	9½	9	22	28½	19	16½	12	28½	9½	32
Total Rate	94½	83½	74	60½	48	37½	37½	39½	30½	26	51	60½	59	37½	33	60½	30½	74
Newnan, Ga.																		
Based on West Point	55	47	42	32	26	21	21	23	21	17	29	32	40	21	21	32	21	42
Local Beyond	33	29½	27½	24	20	14½	14½	14½	9	8	20	24	17½	14½	10	24	9	27½
Total Rate	88	76½	69½	56	46	35½	35½	37½	30	25	49	56	57½	35½	31	56	30	69½
Palmetto, Ga.																		
Based on West Point	55	47	42	32	26	21	21	23	21	17	29	32	40	21	21	32	21	42
Local Beyond	36½	33	26½	26½	21	15½	15½	15½	9	8½	21	26½	18	15½	11	26½	9	26½
Total Rate	91½	80	68½	58½	47	36½	36½	38½	30	25½	50	58½	58	36½	32	58½	30	68½
Atlanta, Ga.	73	66	58	45	38	30	25	32	25	22	32	45	48	30	30	45	30	58

262 STATEMENT NO. 5 WITH DIRECT ANSWER NO. 21. (No. 5.)

Interstate Commerce Commission.

Auditor's Office, May 13, 1899.

Statement Showing Rates on Sugar, Molasses and Rice from New Orleans, La., to Atlanta and LaGrange, Ga., on April, 1896, and present rate—via. L. & N. R. R. Co.

Rates in cents per hundred pounds.

Distance from New Orleans.	From New Orleans, La., To	Sugar in Barrels. C. L.	Sugar in Barrels. L. C. L.	Sugar except in Barrels. C. L.	Sugar except in Barrels. L. C. L.	Molasses in Kegs. C. L.	Molasses in Kegs. L. C. L.	Molasses in Bbls. or Hhds. C. L.	Molasses in Bbls. or Hhds. L. C. L.	Rice. C. L.	Rice. L. C. L.
496	Atlanta, Ga.										
	Rates April, 1896..	18	21	21	21	25	25	25	25	25	25
	Present Rates.. ..	20	23	23	23	25	25	25	25	25	25
425	LaGrange, Ga.										
	Rates April, 1896..	35	38	38	38	54	54	37	37	34½	34½
	Present Rates.	37	40	40	40	57	57	37	37	34½	34½

263 STATEMENT NO. 6 WITH DIRECT ANSWER NO. 22. (NO. 6.)

Interstate Commerce Commission.
Auditor's Office, May 13, 1899.

Statement showing Rates on Classes, Sugar, Molasses and Rice from Atlanta, Ga., to the following points, viz:

Rates in cents per hundred pounds.

From Atlanta, Ga., To	Classes. 1	2	3	4	5	6	A	B	C	D	E	H	F	Rate per Bbl.
Fairburn, Ga.. ..	22	20	17½	15½	13	11	11	11	7	6½	13	15½	14	
Palmetto, Ga.. ..	24	22	20	17½	14½	12	12	12	7½	7	14½	17½	15	
Newnan, Ga.. ...	29½	26½	24	22	17½	13	13	13	8	7½	17½	22	16	
Hogansville, Ga.	36½	33	29½	26½	21	15½	15½	15½	9	8½	21	26½	18	
LaGrange, Ga..	39½	36½	32	28½	22	16½	16½	16½	9½	9	22	28½	19	
West Point, Ga.	45	40½	35	32	24	18½	18½	18½	11	10	24	32	21½	
Opelika, Ga....	62	53	47	38	30	24	18	23	13	12	28	32	26	

Rates in cents per 100 lbs.

Sugar in Bbls. or Hhds.	Molasses in Bbls. or Hhds.	Rice in Bbls. Any quantity.
11	6½	7
12	7	7½
13	9	8
15½	11	9
16½	12	9½
18½	13	11
24	24	24

264 CROSS INTERROGATORIES AND ANSWERS.

In the Circuit Court of the United States for the Southern District of Alabama.

The Interstate Commerce Commission
vs. In Equity, No. 207.
The Louisville & Nashville Railroad Company, The Western Railway of Alabama and the Atlanta & West Point Railroad Company.

Cross interrogatories to be propounded to JESSE M. SMITH, on behalf of the defendants in the above entitled cause.

1. If you state in your answer to original interrogatory No. 4 that the schedules of rates, fares and charges, applying on interstate traffic, are filed by carriers, with the Interstate Commerce Commission, in your office, as auditor of the Commission, state whether the Southern Railway in connection with the other roads participates in the carriage of traffic from New Orleans via Birmingham and Atlanta, to Woodbury, Ga.

If so, do it and its connections charge higher rates from New Orleans to any of the local stations on the Southern Railway, between Birmingham and Atlanta, or between Atlanta and Woodbury, than they charge from New Orleans to Atlanta; and if so, name all of such local stations.

A. Tariffs are published by several of the individual lines operating out of New Orleans, naming rates from that point to points in the territory of the Southeastern Freight Association, including Woodbury, Ga. These tariffs, however, merely name the through rates to the various points, without specifying the routes over which such rates apply. I am, therefore, unable to state whether the rates as published from New Orleans to Woodbury, Ga., apply in connection with the Southern Railway via Birmingham and Atlanta, or not.

265 2. State whether the Southern Railway in connection with other roads participates in the carriage of traffic from New Orleans via Birmingham and Bremen to Woodbury,, Ga. If so, do it and its connections charge higher rates from New Orleans to any of the local stations on the Southern Railway between Birmingham and Bremen, than they charge from New Orleans to Atlanta; and if so, name all of such local stations.

A. As stated in answer to cross-interrogatory No. 1, on account of the failure of the tariffs to specify the routes, I am unable to say whether the published rates from New Orleans to Woodbury, Ga., apply in connection with the Southern Railway via Birmingham and Bremen, or not.

3. State whether the Central of Georgia Railway, in connection with other roads participates in the carriage of traffic from New Orleans via Birmingham to Atlanta. If so, do it and its connections charge higher rates from New Orleans to any of the local stations on the Central of Georgia Railway, between Birmingham and Atlanta, than they charge from New Orleans to Atlanta; and, if so, name all of such local stations.

A. For reasons given in answer to cross-interrogatories Nos. 1 and 2, I am unable to state whether the published rates from New Orleans to Atlanta apply in connection with the Central Railway of Georgia via Birmingham, or not.

4. State whether the Central of Georgia Railway in connection with other roads participates in the carriage of traffic from New Orleans via Carrollton and Griffin, Ga., to Woodbury, Ga. If so, do it and its connections charge higher rates from New Orleans to any of the local stations on the Central of Georgia Railway between Carrollton and Griffin, or be-
266 tween Griffin and Atlanta than they charge from New Orleans to Atlanta; and if so, name all of such local stations.

A. For reasons given in answer to cross-interrogatories Nos. 1 and 2, I am unable to state whether the published rates from New Orleans to Woodbury, Ga., apply in connection with the Central of Georgia Railway via Carrollton and Griffin, Ga., or not.

5. What is the distance via the Southern Railway from Atlanta to Woodbury, Ga.?

A. The distance from Atlanta to Woodbury, Ga., via the Southern Railway is 66 miles.

6. Does the Macon & Birmingham Railway Co. file annual reports with the Interstate Commerce Commission, as required by section 20 of the Act to Regulate Commerce? If so, please refer to the annual report made by said company to said Commission, for the year ending June 30, 1898, and give the following information:

Number of locomotives owned by said company.
Number of freight cars, box.
Number of freight cars, flat.
Passenger earnings.
Freight earnings.
Other earnings.
Total earnings.
Operating expenses.
Net earnings.
Total deductions.
Surplus or deficit.

A. The Macon & Birmingham Railway Co. files annual reports with the Interstate Commerce Commission, as required by section 20 of the Act to Regulate Commerce. The report of this company filed for the year ending June 30, 1898, gives information on the points specified as follows:

Number of locomotives owned by said company	4	
Number of freight cars, box	78	
Number of freight cars, flat	62	
Passenger earnings	19,924.30	
Freight earnings	44,142.49	
Other earnings	1,062.87	
Total earnings	65,129.66	
Operating expenses	77,511.87	
Net earnings	12,382.21	deficit
Total deductions	29,749.59	
Surplus or deficit	42,131.80	deficit

267 7. State whether said Macon & Birmingham Railway Company constitutes a part of any important railway system, or whether it is isolated in its operation and management.

A. The annual reports filed by said company indicate that it is an independent organization.

8. If in answer to original interrogatory No. 5, you state that the practice of making the greater charge for the shorter than the longer haul over the same line in the same direction, the shorter haul being included in the longer, prevails to the greatest extent in the territory south of the Ohio and Potomac rivers and east of the Mississippi river, state to what extent it does exist in any other territory, and specify each and every road, upon which it does exist in such other territory or territories.

A. My answer to original interrogatory No. 5 was based on experience gained from the examination of tariffs from all sections of the country since the beginning of my service with the Commission, January 1st, 1888, and my answer to cross-interrogatory No. 8, must be made on the same basis, as it would be manifestly impracticable to make a special examination of the immense number of tariffs filed by all carriers west of the Mississippi and north of the Ohio and Potomac rivers, in order to determine the exact extent of variations from the rule of the fourth section of the act, and the particular roads upon which such variations exist.

In the territory of the Central Freight Association, and what is usually known as Trunk Line territory, which embrace near-

ly all the territory north of the Ohio and Potomac rivers, and east of the Mississippi river, the general rule is that rates are not higher for shorter than for longer distances over the same line in the same direction. There are a few exceptions, however, to this rule. The Chicago and Ohio River Railroad (now a part of the Indianapolis, Decatur and Western Railway)
268 running north and south in Illinois, is crossed by a number of roads running east and west. On grain and grain products to eastern seaboard territory slightly higher rates are charged from the local points than from the crossings, the rates from such crossings being those adopted by the east and west lines. Such traffic as the Chicago and Ohio River Railroad obtains at the crossing points is carried to another connecting point with an east and west line, and in this way the traffic is carried through local points taking slightly higher rates. From certain points on the Allegheny Valley Railway to Chicago and other western points traffic is also carried in a similar manner through points taking higher rates. I believe there are a few other intsances of this character in this territory, though I am unable at this time to locate the roads upon which they exist.

In the territory west of the Mississippi river, and including therewith Chicago, from which through rates are made to nearly all points in that territory, rates as a general rule are in conformity with the provisions of section four of the Act to Regulate Commerce. The instances where the higher charge is made for shorter than for longer distances over the same line in the same direction are, however, somewhat more numerous in this territory than that previously described, but for less than in the territory south of the Ohio and Potomac rivers and east of the Mississippi river.

The rates from Chicago and Mississippi river points to Missouri river points; from Chicago, Mississippi river and Missouri river points, to Texas points, and from all of the above mentioned points of origin to Colorado and Utah common points, apply as maxim rates to intermediate points on the direct lines, except that during "rate wars" the rates to the common or competitive points are often reduced without corresponding reductions being made at the local intermediate points.

The rates from Missouri river points, Chicago, and
269 points east thereof, to "Pacific Coast Terminal Points" are lower than the rates from same points to many of the intermediate points on the direct lines located between the Missouri river and the Pacific Coast; and this is also true of rates applying in the opposite direction from Pacific Coast points.

The only other instances I can now call to mind where rates

are higher to shorter than longer distance points on same line in this territory, are the rates from Chicago and Mississippi river points intermediate to Montana common points, and Spokane, Washington, the rates to intermediate points in some cases being higher than the rates to the more distant points referred to.

9. In the territory which lies north of the Ohio and Potomac rivers, and between Chicago and New York, is it not the practice in the majority of cases, to charge to and from local non-competitive stations, which are situated between junction points or competitive stations as much for the shortest as for the longest haul?

A. Rates from New York and other eastern seaboard points to local points in the territory in question, from such examination of the tariffs as I have been able to make, appear in the majority of cases to be made the same as the next junction point beyond, while in some cases the rates to such local points are graded up to, but not higher that the next junction point beyond. The same is true of rates from local points in this territory to points in eastern seaboard territory.

10. What is the distance from New York to Indianapolis via the the Pennsylvania R. R. and Pennsylvania Lines west of Pittsburg; what is the distance from Indianapolis to Moorefield on the Indiana, Decatur & Western Railroad; and what is the distance from Indianapolis to Roachdale on the same road; is not Roachdale, what is known as a junction or competitive point?

A. The distance from New York to Indianapolis via the Pennsylvania Railroad and Pennsylvania Lines west of Pittsburg, is 825 miles; from Indianapolis to Moorefield, on the Indiana, Decatur & Western Railway, 2 miles, and from Indianapolis to Rochdale, on same road, 35 miles. Roachdale is
the junction point of the Indianapolis, Decatur and
270 Western Railway and the Chicago, Indianapolis and
Louisville Railway.

11. What are the class rates in cents per hundred pounds from New York to Indianapolis?

A. The class rates from New York to Indianapolis are as follows:

In Cents Per Hundred Pounds.

Classes					
1	2	3	4	5	6
70	60	47	33	28	23

12. What are the class rates from New York to Moorefield, and what are the class rates from New York to Roachdale?

A. The class rates from New York to Moorefield and Roachdale are as follows:

In Cents Per Hundred Pounds.

Classes					
1	2	3	4	5	6
75	65	50	35	30	25

13. What is the difference in cents per hundred pounds between the first-class rate from New York to Indianapolis, and the first-class rate from New York to Moorefield, in cents per hundred pounds?

A. The difference between the first-class rate from New York to Indianapolis and the first-class rate New York to Moorefield is five (5) cents per hundred pounds.

14. What does that difference amount to per ton per mile for the distance between Indianapolis and Moorefield?

A. Five cents per hundred pounds or $1.00 per ton, divided over the distance of two miles from Indianapolis to Moorefield amounts to fifty cents per ton per mile.

16. If you state in answer to original interrogatory No. 9 that the greater charge for the shorter than the longer haul over the same line in the same direction, the shorter haul being included in the longer, has never been made to your personal knowledge, except in cases of competition in transportation to the longer distance points, state whether it was not publicly charged in the newspapers and other publications, prior to the passage of the Act to Regulate Commerce, that there were instances where the greater charge was made for the shorter than the longer haul, in order to favor certain longer distance points, where no competition existed, but where the interests of railroad officials or their friends were to be promoted by discriminating in favor of the longer distance points?

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A. I have no recollection of seeing statements of the character mentioned in newspapers or other publications, prior to the passage of the Act to Regulate Commerce, or since.

17. If in answer to original interrogatory No. 10, you state that the general rule is to make through rates less than the sum of the local rates, is it not true that such rule has resulted from the fact that through rates are generally made for the transportation of long distance competitive traffic, and that the only reason why they are not made as high as the sum of the local

rates is, either competition between carriers, or competition between markets, or competition between products has prevented the through rates from being made as high as the sum of the locals; and in some instances has it not resulted from the fact that certain products, such as grain, coal, iron ore, iron, etc., could not stand a through rate of transportation that would be equal to the sum of the locals?

A. It is true that as a rule through rates cover longer distances than local rates, it is also true that long distance traffic will not as a rule bear as high rates per mile as short distance traffic, and this is especially true in regard to low grade freights such as grain, coal, iron ore, pig iron, lumber, etc. It is probably true that the only reasons for not making through
272 rates the sum of the locals are, either competition between carriers, competition between markets, competition between products, or that the traffic will not bear and could not be moved over long distances at through rates based on the sums of the local rates.

18. You are asked in original interrogatory No. 11, with reference to what are known as "combination rates" in southern territory. Please refer to the 11th Annual Report of the Interstate Commerce Commission, page 27, and state whether or not the following extracts are correct:

"The through rate from Chicago to Kearney is made by adding to the through rate to Omaha the local rate from Omaha to Kearney. Merchandise is transported by continuous shipment upon through bills of lading from Chicago to Kearney at this rate.

* * * * * * * * * * * * * * * *

"Kearney is but one of thousands of places to which the through rate is made upon this same plan. A large part of interstate rates are joint rates, in reference to which the same thing would be true."

A. The extracts quoted from the Eleventh Annual Report of the Interstate Commerce Commission are correct.

19. You are asked in original interrogatory No. 12 if a local rate is not intended to cover the cost of the terminals. Is it not equally true that a through rate is intended to cover the cost of two terminals?

A. It is true, I believe, that through rates generally cover the usual and ordinary expenses at the two terminals.

20. In original interrogatory No. 13, you are asked if local rates are not higher in proportion to distance than through rates. If you say that through rates are lower in proportion to distance than local rates, is not the reason of it, that through rates are generally for the transportation of long distance traffic

between highly competitive points; and that the competition of carrier with carrier, or market with market, or product with product, compels the acceptance of through rates, which are less in proportion to distance than could be reasonably charged upon local traffic?

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A. It is true that through rates usually cover longer distances than local rates, and are often between highly competitive points; and it is also true that competition of carrier with carrier, or market with market, or product with product are important factors in producing lower rates in proportion to distance than are charged upon local traffic. Besides these reasons there is also the fact that most freight will not bear and cannot be moved along distances at rates as high in proportion to distance as are usually charged on short distance local traffic; and the further fact that the cost of handling long distance through traffic is less in proportion to distance than local traffic.

21. In original interrogatory No. 15, you are asked, what is the minimum carload allowed under the classification, which controls in the transportation of class goods, sugar, molasses and rice, from New Orleans, to Montgomery, Opelika, West Point, LaGrange, etc. Do the actual consumers of class goods, sugar, molasses or rice, ever buy those articles in carload quantities?

A. I am unwilling to say whether the actual consumers of sugar, molasses or rice, ever buy these articles in carload quantities, or not. It is a well known fact, however, that the actual consumer usually buys such articles in much smaller quantities.

22. Will any reduction in rates increase the tonnage or revenue of railway carriers, unless it be such as to reach the consumer, and such as to induce him to increase the quantity consumed by him?

A. A reduction in rates would not increase the tonnage or revenue of railway carriers unless such reduction had the effect of causing an increased consumption of the articles on which the rates were reduced. While reduction in price may, and no doubt often does, increase individual consumption to some extent, it is not upon this that carriers rely for increased tonnage and revenue as a result of reduction in rates. It is a well known fact that favorable freight rates has a tendency to build up and add to the prosperity of a place by attracting new industries, mills, factories, etc., thus increasing its population, and in that way increasing the business of the carriers by which it is served.

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23. Is not the volume of traffic carried between large cities, such as New Orleans and Atlanta, sufficient to enable carriers

to make up fully loaded cars of freight destined to Atlanta, which are carried all the way through, without rehandling the freight, from New Orleans to Atlanta?

A. I have no knowledge as to the volume of traffic carried between New Orleans and Atlanta. It may be said, however, that the volume of traffic between many of the large cities is such as to enable the carriers to transport the freight, to a large extent, in carloads, all the way through without rehandling.

24. Is not the volume of traffic carried between New Orleans and small towns like LaGrange, Ga., so small that the carriers cannot make up fully loaded cars of freight destined to LaGrange, and therefore it must be rehandled one or more times between New Orleans and LaGrange?

A. I have no knowledge as to the volume of traffic carried between New Orleans and LaGrange, nor to what extent such traffic is carried in full carloads.

25. Is not the "revenue per ton per mile," which is shown in the various volumes of Statistics of Railways in the United States, published by the Interstate Commerce Commission annually, ascertained by dividing the "total freight revenue" of a railroad by the "number of tons carried one mile?"

275 A. The "revenue per ton per mile" which is shown in the volumes of Statistics of Railways in the United States, published annually by the Interstate Commerce Commission, is determined by the carriers and reported to the Commission in their annual reports. It is ascertained, I believe, in the manner indicated, that is, by dividing the "total freight revenue" of a railroad by the "number of tons carried one mile."

26. In order to ascertain the "number of tons carried one mile," is it not necessary to keep an account of the actual distance which each ton is carried? Is not each ton then multiplied by the number of miles it is carried, so as to get the equivalent in "tons carried one mile," and does not the aggregate of the equivalents in "tons carried one mile" show the "number of tons carried one mile?"

A. The method of ascertaining the "number of tons carried one mile" is, I believe, practically as indicated in the interrogatory, that is, an account is kept of the number of tons carried and the number of miles carried. The number of tons carried multiplied by the number of miles carried gives separately the number of tons carried one mile. The aggregate of these amounts is the total "number of tons carried one mile" for the period covered.

27. Is not the "number of tons" carried one mile made up

of thousands of miscellaneous shipments of different kinds of freight carried over different parts of a railroad, and carried different distances?

A. The "number of tons carried one mile" includes all freight carried over all parts of the road for the year which the report covers, regardless of class, with the probable exception of freight carried for the company's own use.

276 28. Can the revenue per ton per mile of any railroad be used as a standard for fixing the reasonableness of rates upon the different classes of freight and commodities carried by such railroad? If so, please state in the form of an equation how you could use the "revenue per ton per mile" as a factor to ascertain such reasonable rates upon the different classes and commodities?

A. In my opinion it would be impracticable to use the "revenue per ton per mile" as a standard for fixing the reasonableness of rates. At the same time the "revenue per ton per mile" or, in other words, the average rate per ton per mile on all classes of traffic of a railroad might serve a useful purpose in determining the reasonableness of its rates in general by comparison with the average rate per ton per mile of other roads similarly situated.

29. Is the revenue per ton per mile ever the same upon the same railroad, in any two successive years?

A. I am unable to say whether the "revenue per ton per mile" is ever the same upon the same railroad in any two successive years. Such a thing would be very unlikely.

30. Is the "revenue per ton per mile" ever the same upon any two divisions of the same railroad?

A. The answer to cross-interrogatory No. 29 answers this also.

31. Is any article of freight or commodity ever charged by any railroad a rate which is equivalent to the average revenue per ton per mile?

A. I think it is very probable that the rates charged on some commodities for certain distances on a railroad are the same per ton per mile as the average rate per ton per mile of such railroad.

277 32. Is it possible to ascertain the average revenue per ton per mile for any one year, until after the expiration of such year?

A. It would not be possible, I think, to ascertain the average revenue per ton per mile for any one year until after the expiration of such year.

33. Did you ever know or hear of any general freight agent or traffic manager, who used the average revenue per ton per mile as a factor in making freight rates? If so, who was he?

A. I know of no such case, but it should be stated in this connection that I am not familiar with the methods or bases used by the various traffic officials throughout the country in fixing their freight rates.

34. Did not John K. Cowen and Oscar G. Murray, receivers of the Baltimore & Ohio Railroad, address a letter dated December 20th, 1898, to Hon. Martin A. Knapp, chairman of the Interstate Commerce Commission, Washington, D. C., in which they stated that:

"Within the territory north of the Ohio river and east of the Mississippi, the railroad carriers are transporting the larger part of the interstate traffic at rates less than those shown on the published tariffs filed with your commission, which are by statute the only lawful rates."

And is it not your information and belief that said facts so stated were true?

A. I have no personal knowledge of such a letter. As to the correctness of the statements said to be contained in said letter, I have not sufficient information upon the subject treated on which to base a belief.

278 Counsel for the complainant, the Interstate Commerce Commission, objects to that portion of cross-interrogatory 16 which calls upon the witness to "state whether it was not publicly charged in the newspapers and other publications, prior to the passage of the act to regulate commerce, that there were instances where the greater charge was made for the shorter than the longer haul, in order to favor certain longer distance points, where no competition existed, but where the interests of railroad officials or their friends were to be promoted by discriminating in favor of the longer distance points," and moves that said interrogatory and the answer thereto be stricken from the records on the following grounds:

1. If it be true that such a charge as that referred to in the interrogatory was made in "newspapers and other publications," those newspapers and other publications were the best evidence that such charge had been so made, and should be introduced in evidence, or a predicate laid for the introduction of secondary evidence.

2. Said interrogatory calls for matters alleged to have been published in "newspapers and other publications," which are not claimed to be official, and of which no Court could take judicial notice.

3. Said alleged charges if made in said "newspapers and other publications" were not competent evidence that said charges were true.

4. Said charges if made as alleged in "newspapers and other publications," and if true, are wholly irrelevant and have no bearing whatever upon any question in issue in this case.

5. Said interrogatory calls for matter wholly ir-
279 relevant, incompetent and in every respect illegal.

Counsel for the complainant, the Interstate Commerce Commission, also objects to cross-interrogatory 34, and moves that the same and the answer thereto be stricken from the record, on the following grounds:

1. Said interrogatory calls for secondary evidence of the contents of a letter without laying a predicate for the introduction of such secondary evidence by proving the loss or destruction of such letter or by proving that its production could not be had by proper proceedings.

2. Said alleged letter is claimed to have been written by parties no way interested in this cause, and relates to a matter wholly irrelevant to any issue in this cause.

3. The statement alleged to have been made in said letter and sought to be proven by said interrogatory is not competent evidence of the matter contained in said statement.

4. Said interrogatory calls for testimony irrelevant, incompetent and in every respect illegal, and the record of this case should not be burdened with such manifestly illegal questions and answers thereto.

Counsel for the Interstate Commerce Commission, the complainant, not waiving objection to the many other irrelevant and otherwise illegal cross-interrogatories propounded in behalf of the defendants, propounds the following re-direct interrogatories to the witness, Jesse M. Smith:

280 Re-Direct Examination.

Re-Direct Interrogatory No. 1. In cross-interrogatory No. 18 you are asked to state whether certain alleged extracts from the Eleventh Annual Report of the Interstate Commerce Commission (p. 27 of that report), are correct. If in answer to that cross-interrogatory you state that, as set forth in said annual report, "the through rate from Chicago to Kearney is made by adding to the through rate to Omaha the local rate from Omaha to Kearney," state whether Kearney is the shorter or longer distance point than Omaha on the haul from Chicago?

A. Kearney is a greater distance from Chicago than Omaha.

Re-Direct Interrogatory No. 2. State whether or not under such through rate from Chicago to Kearney, made up as stated

in the preceding interrogatory, the haul is through Omaha to Kearney or through Kearney to Omaha?

A. The haul from Chicago to Kearney by any of the direct lines is either through Omaha or some adjacent Missouri river crossing.

Re-Direct Interrogatory No. 3. Do the Illinois Central road and the New Orleans & Northeastern road publish through rates from New Orleans to LaGrange? Do they also publish through rates to any points on the Macon & Birmingham road? If so, to what points? Is the route given to which those rates apply?

A. The Illinois Central Railroad and New Orleans & Northeastern Railroad publish through rates, class and commodity, from New Orleans to LaGrange, Ga. Both of the roads named also publish through rates, class and commodity, to other junction points on the Macon & Birmingham Railroad, besides La-

Grange, as follows:

281 Harris City, Woodbury, Thomaston, Yatesville and Culloden, Ga.

Through rates are not published by either the Illinois Central Railroad or the New Orleans & Northeastern Railroad from New Orleans to the strictly local stations on the Macon & Birmingham Railroad, except rates on fertilizer. Through rates on this commodity are published by the New Orleans & Northeastern Railroad only, from New Orleans to local stations on the Macon & Birmingham Railroad as follows:

Skipperton, Hardy's, Lizella, Montpelier, Morans, Dyas, Middlebrooks, Crest, Thundering Springs, Nelson's, Odessa, Moundville and Robertson, Ga. The tariffs do not specify the particular routes over which the rates named apply.

JESSE M. SMITH.

I, Eugene L. Gaddess, of Washington, D. C., the commissioner named in the stipulation attached to the interrogatories herein, do certify that I called before me the witness, Jesse M. Smith, and after having duly sworn him to speak the truth, the whole truth and nothing but the truth, took down his answers to said interrogatories, and that the foregoing pages contain a full, true and correct report of the testimony given by said witness.

This the 7th day of June, A. D. 1899.

EUGENE L. GADDESS, Commissioner.

Received and filed June 10th, 1899, and published by agreement on file this the 19th day of June, A. D. 1899.

RICHARD JONES, Clerk.

282 DEPOSITION OF FULLER E. CALLOWAY.

In the Circuit Court of the United States for the Southern District of Alabama.

The Interstate Commerce Commission
vs. In Equity No. 207.
Louisville & Nashville Railroad Co., Western Railway of Alabama, and Atlanta & West Point Railroad Co.

Direct Interrogatories and Answers.

Interrogatories filed in the above entitled cause on behalf of the complainant therein to Fuller E. Callaway, of LaGrange, Ga.:

The witness, FULLER E. CALLAWAY, being duly sworn to speak the truth, the whole truth and nothing but the truth, doth depose as follows:

Intr. No. 1. What is your name and residence and in what occupation or business are you engaged?

Ans. Fuller E. Callaway, LaGrange, Ga.; merchant.

Intr. No. 2. If you say that you reside at LaGrange, Ga., state how long you have so resided and how long you have been engaged in business there?

Ans. I have resided at LaGrange twenty-eight years and have been engaged in business there on my own account for eleven years.

Intr. No. 3. State whether merchants of Opelika, Ala., and Atlanta, Ga., sell goods and do business at LaGrange and in territory around LaGrange?

Ans. Yes, they do.

Intr. No. 4. What articles of traffic or merchandise constitute the bulk of the traffic shipped from New Orleans, La., to LaGrange?

Ans. Sugar, molasses and rice principally, but all classes are shipped.

Intr. No. 5. State whether LaGrange merchants in selling in territory in and around LaGrange, sugar, molasses and rice, and also other articles of merchandise shipped from New Orleans, come in competition with Atlanta and Opelika merchants and whether or not Atlanta and Opelika have an advantage in such competition?

Ans. Yes, we come in competition with them and they have the advantage of us.

283 Intr. No. 6. If in answer to the preceding interrogatory, you state that LaGrange merchants are at a

disadvantage in such competition, from what that disadvantage results?

Ans. From discriminating rates in favor of Atlanta and Opelika against LaGrange.

Intr. No. 7. What are the carload rates from New Orleans to LaGrange on sugar, molasses and rice? What are the less than carload rates from New Orleans to LaGrange on those articles?

Ans. The less than carload rates from New Orleans to LaGrange on sugar is 38c. per 100 lbs., rice, 34-2 per 100 lbs., and molasses, 37c. per 100 lbs. The agent here claims that he has no carload rates on those articles. Sugar is shipped in barrels to LaGrange from New Orleans.

Intr. No. 8. What are the carloads rate from New Orleans to Hogansville, Newnan, Palmetto and Fairburn and Atlanta on sugar, molasses and rice? What are the less than carloads rates from New Orleans to those points on sugar, molasses and rice?

Ans. The railroad agent here will not quote a carload rate on sugar, molasses and rice, from New Orleans to Hogansville, Newnan, Palmetto and Fairburn, and I cannot obtain a less than carload rate on molasses and rice. The less than carload rate on sugar is as follows: To Hogansville, 36c.; to Fairburn, 32c.; to Palmetto, 33c.; to Newnan, 34c. The carload rate on sugar from New Orleans to Atlanta is 18c., less than carload rate, 21c. I do not know the exact rates on molasses and rice, but they are in proportion to rates on sugar.

Intr. No. 9. What are the carload and less than carload rates on sugar, molasses and rice from New Orleans to Opelika? What are the carload and less than carload rates on first-class goods from New Orleans to Opelika?

Ans. The rates on sugar from New Orleans to Opelika are carload, 18c, less than carload, 21c. I do not know exactly what the rates are on molasses and rice from New Orleans to Opelika. The less than carload rates from New Orleans to Opelika on first-class goods is $1.03 per 100. There is no carload on first-class freight.

Intr. 10th. What are the rates from Opelika to LaGrange on sugar, molasses and rice and first-class goods?

284 Ans. The rates from Opelika to LaGrange are as follows, per 100 lbs.: 1st class, 32c.; 2nd class, 29c.; 3rd class, 26c.; 4th class, 23c.; 5th class, 19c.; 6th class, 14c. Class A., 14c.; class B., 14c.; class C., 8-2c.; class D., 8c.; class E., 19c.; class H., 23c.; class F., 17-2c.; sugar, 14c.; molasses, 9c.

Intr. No. 11. If in your answers to preceding interrogatories you have stated that LaGrange is placed at a disadvantage in

competition with Opelika and Atlanta merchants, in territory in and around LaGrange, and that this disadvantage results from discriminations in rates, give specific examples of such discriminations. State the extent of the injury to LaGrange, if any, as a city, merchantile center, or jobbing point?

Ans. The disadvantage results from the fact that an Opelika merchant can ship first-class goods from New Orleans to Opelika for $1.03 per 100 lbs., and then reship that freight from Opelika to LaGrange for 32c. per 100 lbs. This makes Opelika's combination rate from N. O. to LaG., $1.35 per cwt., while LaGrange merchants have to pay $1.43 per 100 lbs. on a through shipment of first-class freight from New Orleans, through Opelika to LaGrange. This discrimination allows an Opelika merchant to undersell the LaGrange merchant 8c. per 100 lbs. on first-class goods at the LaGrange merchants' front door. This difference applies proportionately on all classes of freight. Also an Atlanta merchant can ship first-class freight from New Orleans, through LaGrange to Atlanta for $1.03 per 100 lbs., and reship the same back to LaGrange at 40c. per 100 lbs. This makes Atlanta's combination rate to LaGrange $1.43 per 100 lbs. In other words, this enables an Atlanta merchant to ship from New Orleans to Atlanta, through LaGrange, and then reship back to LaGrange at $1.43 per 100 lbs., while the through rate now charged and collected on freight shipped from New Orleans to LaGrange is $1.43 per 100 lbs. This enables the Atlanta merchant to sell goods in LaGrange at the same price as a LaGrange merchant can. Further, an Atlanta merchant can ship first-class freight from New Orleans, through LaGrange, 495 miles to Atlanta at $1.03 per 100 lbs., and can reship the same 59 miles back to Hogansville, towards and within 12 miles of LaGrange, at 36c. per 100 lbs., which makes Atlanta's combination rate to Hogansville, on New Orleans products, $1.39 per 100 lbs. LaGrange merchants to handle Hogansville's trade, have to pay $1.43 per 100 lbs. from New Orleans to LaGrange and 20c. from LaGrange to Hogansville, making LaGrange's combination rate to Hogansville, $1.63 per 100 lbs. This enables Atlanta merchants to reship to Hogansville, 59 miles and within 12 miles of LaGrange at 24c. per 100 lbs. less than LaGrange merchants can ship to Hogansville.

285 This difference works in the same proportion on all classes of freight, the advantageous difference in favor of Atlanta, getting larger and larger between each station between Hogansville and Atlanta. The result of the above discrimination builds up Atlanta and Opelika merchants at the expense of LaGrange merchants and makes it impossible for LaGrange to be a mercantile center or jobbing

point, until these discriminations cease as every local station on the Atlanta & West Point R. R. get lower rates from New Orleans, New York and Eastern supply markets and Ohio river supply markets, on all classes of freight, than LaGrange, although the mileage is greater at all stations between LaGrange and Atlanta from New Orleans, and between LaGrange and Montgomery from New York.

Intr. No. 12. State whether or not Atlanta merchants can sell goods in Hogansville, Newnan, Palmetto and Fairburn, and also whether or not LaGrange merchants can sell goods at either of those places in competition with Atlanta merchants. If LaGrange merchants cannot compete with Atlanta merchants at those localities, explain why this is so.

Ans. Atlanta merchants do sell goods at Hogansville, Newnan, Palmetto and Fairburn. LaGrange merchants sell a few goods in Hogansville, but have to lose 24c. per 100 lbs. on first class freight, caused by the discrimination in favor of Atlanta, when they do it. The reason why we cannot compete with Atlanta at these stations is as follows, all the following being based on first class rate per 100 lbs.: Rates from New Orleans to Atlanta 1.03, Atlanta to Hogansville, 36c., making the rate from New Orleans to Atlanta and then back to Hogansville $1.39. Rates from New Orleans to LaGrange, $1.43, rates from LaGrange to Hogansville, 20c., making rates from New Orleans to LaGrange and on to Hogansville $1.63. This makes Atlanta haul New Orleans products 555 miles to Hogansville for $1.39, while for LaGrange's haul of 437 miles to Hogansville, she is charged $1.63. This makes Atlanta's haul 118 miles longer at 24c. per 100 less. On the same basis as above calculations, Atlanta handles New Orleans products in Newnan, on a 78 miles longer haul, at a 36c. per 100 lbs. lower rate than LaGrange. On the same basis, Atlanta handles New Orleans products in Palmetto, on a 50 miles longer haul, at a 48c. lower rate than LaGrange. On the same basis, Atlanta handles New Orleans products in Fairburn, on a 35 miles longer haul, at a 63c. per 100 lbs. lower rate than LaGrange. This discrimination also occurs to an equal extent on all shipments from New York and Eastern supply markets, and Cincinnati and Ohio river supply markets, as well as from New Orleans.

286 Intr. No. 13. State whether traffic from New Orleans to LaGrange is shipped under a through bill of laden, [lading] naming an aggregate through rate.

Ans. Yes, it is.

Intr. No. 14. Are goods ever shipped from New Orleans to LaGrange in carloads? If so, state whether or not they are in such case brought through to LaGrange in the same cars in which they are originally loaded at New Orleans.

Ans. Very seldom; when they are, however, they come in the original cars, in which they are loaded at New Orleans.

Intr. No. 15. If you say that goods are seldom shipped in carloads from New Orleans to LaGrange, state why this is so.

Ans. The reason why goods are seldom shipped in carloads from New Orleans to LaGrange, is on account of the excessive discriminations in freight rates against LaGrange, which curtails LaGrange's outlet to such an extent that she cannot handle carloads in competition with Opelika and Atlanta, which have such preferential rates against LaGrange.

Intr. No. 16. On shipments of goods from New Orleans to Hogansville, Newnan, Palmetto and Fairburn, are the terminal expenses at those points greater or less, per 100 lbs. than at LaGrange, or the same?

Ans. About the same; possibly higher, but not lower.

Int. 17. How many employes has the railroad company at LaGrange engaged in handling all the freight from all localities and directions and what is the pay per month of such employes?

Ans. to No. 17. The Atlanta & West Point has seven employes at their depot, who handle all the freight and passenger business, from all locations and all directions, at a gross salary of about $325.00 per month.

Intr. No. 18. State, if you can, the total tonnage of traffic per month or per annum at LaGrange, and what the pay of the employes engaged in handling that traffic amounts to per 100 lbs.

Ans. I do not know.

Intr. No. 19. State the population of and mercantile and manufacturing enterprises of LaGrange, Opelika, Hogansville, Newnan, Palmetto and Fairburn.

Ans. LaGrange has a population of about five thousand, thirty-five or forty good mercantile establishments, two large cotton mills, foundry, carriage factory, creamery, grist mills and planing mills, water works and electric light plant, two railroads, two large female colleges and several other
287 smaller industries. Opelika has a population of about five thousand, thirty-five or forty mercantile establishments, ice factory, planing mills, water works and electric lights and three railroads. Hogansville has a population of about seven hundred and fifty, fifteen to twenty stores and oil mill. Newnan has a population of about forty-five hundred, one cotton mill, thirty to thirty-five stores, two railroads, water works and electric lights, fertilizer works, foundry and machine shops and planing mills. Palmetto has about seven hundred and fifty population, one cotton mill and about fifteen stores.

Fairburn has about nine hundred population, fifteen stores and harness factory.

Int. 20. What other railways, if anv, besides the Atlanta & West Point Railroad, reach LaGrange? What other railways, if any, reach Hogansville, Newnan, Palmetto and Fairburn?

Ans. The Macon & Birmingham, which runs from Macon to LaGrange also reaches LaGrange. At Macon it connects with the Central and Southern road and competition is possible via both of these routes, from New Orleans. It also connects with the Southern at Woodbury and Yatesville and competition is possible via these two routes, from everywhere. It connects and has divisions in and transports goods from LaGrange to New York via the Central Railroad of Georgia and Ocean Steamship Co. at Savannah, Ga., via the Georgia Railroad, South Carolina & Georgia Railroad and Clyde Steamship Line at Charleston, via Southern Railroad and Mallory Steamship Line at Brunswick, and via Macon & Northern Railroad, Seaboard Air Line and Old Dominion Steamship Co. at Norfolk. The Macon & Birmingham Railroad did compete in connection with the Georgia Midland & Gulf at Woodbury, and the Atlanta & Florida at Yatesville, and carry business from New Orleans and all locations, until the Atlanta & Florida and Georgia Midland & Gulf were bought by the Southern. Since then the Southern has withdrawn divisions via these routes, thereby stifling competition. Since the Southern froze us out at Yatesville and Woodbury, we have until recently had a competitive rate open from the West and New Orleans via the Central of Georgia and Macon & Birmingham. These divisions were withdrawn last October by the Macon & Birmingham at the instance of the Atlanta & West Point, the Macon & Birmingham fearing a withdrawal of through business in the hands of the Atlanta & West Point, destined to Macon, which the Atlanta and West Point had been giving them at LaGrange. No railroad except the Atlanta & West Point reaches Hogansville, Palmetto or Fairburn; the Central of Georgia reaches Newnan.

288 Intr. No. 21. Do transportation rates enter into and affect the prices at which yourself and other LaGrange merchants can sell goods to consumers in and around LaGrange?

A. Yes.

Intr. No. 22. How do prices of goods affect their sale or consumption? Are more goods sold to consumers when they are cheap or when they are high? What is your opinion and experience in reference to this matter?

Ans. Low prices increase the sale and consumption of goods and high prices decrease their sale and consumption.

Intr. No. 23. How will a reduction of the rates to LaGrange so as to make them not higher than the rates to longer distance competitors, affect the tonnage of traffic to LaGrange? Will it increase or diminish that tonnage? Give your reason for whatever opinion you may express on this point.

Ans. A reduction of freight rates to LaGrange to equal the rates of longer distance competitors, will increase the tonnage to LaGrange for the reason that it will enable us to sell goods cheaper than we can now, which will enable us to compete with the favored cities that are under-selling us now.

Intr. No. 24. What effect, if any, do relatively low or preferential rates to a locality have in increasing the population of such locality and inducing the investment of capital there, and in promoting the prosperity of such locality in other respects?

Ans. Relatively low or preferential rates to a locality increase the population, induce the investment of capital there and promotes prosperity in every respect.

Intr. No. 25. What effect, if any, do relatively high rates to a locality or rates which discriminate against a locality, have on its prosperity and progress in the respects named in the preceding interrogatory?

Ans. Relatively high rates, which discriminate a locality, decrease the population, retards the investment of capital and reduces prosperity in every respect.

289 Intr. No. 26. Do you know, or can you set forth any other matter or thing, which may be of benefit to the parties at issue in this cause, or either of them, or that may be material to the subject of this your examination, or the matters in question in this cause? If yea, set forth the same fully and at large in your answer.

Ans. LaGrange, Ga., was a town and trade center for adjacent surrounding territory, twenty years before any railroad was built to LaGrange; she had thirty-five to sixty miles of territory in every direction before the railroads were built, but since then, on account of the discriminations in rates against LaGrange and in favor of other towns along the railroad, her territory has been reduced to where she has only from five to fifteen miles of territory—in fact 'til she meets some town or city which has lower freight rates. LaGrange was incorporated by the State Legislature in 1829 and has grown fairly well considering the discriminating freight rates against her.

290 Cross-Interrogatories and Answers.

Cross Intr. No. 1. If you state that merchants of Opelika or Atlanta sell goods at LaGrange, or in territory around LaGrange, please specify to which of the lettered or numbered

classes, used in the Southern States Freight Association Classification, the goods to which you refer belong—and state what kind of goods they are.

Ans. The merchants of Opelika and Atlanta sell goods at LaGrange and in territory around LaGrange of all the lettered and numbered classes used in the Southern States Freight Association Clasification and also the goods which take a special commodity rate. They are composed of all kinds of goods.

Cross-Intr. No. 2. What are the carload and less than carload rates on sugar, molasses and rice, from New Orleans to Opelike, Hogansville, Newnan, Palmetto, Fairburn and Atlanta, respectively?

Ans. The carload rates on sugar from New Orleans to Opelika and Atlanta is 18c. per 100 lbs., less than carload 21c. per 100 lbs. I do not know the molasses and rice rates. The less than carload rates on sugar from New Orleans to Hogansville, 36c. per 100 lbs., to Newnan, 34c.; to Palmetto, 33c.; to Fairburn, 32c. No carload rates are given to those towns by the railroads.

Cross-Intr. No. 3. State the poulation and the mercantile and manufacturing enterprises of Atlanta.

Ans. The population of Atlanta by the 1890 census was 65,533, but I think that she now has about seventy-five to eighty thousand inhabitants. She has large manufacturing and mercantile enterprises in proprtion to a city of that size. I consider her the biggest city of her size in America.

Cross-Intr. No. 4. If you state that transportation rates or charges enter into and affect the prices at which yourself and other LaGrange merchants can sell goods to consumers in and around LaGrange, state how much per hundred pounds you would reduce the price at which you sell goods to your customers, in and around LaGrange. State the precise amount of reduction on each article in which you deal.

Ans. If given the rates I can sell goods coming under
first class freight 40c. per hundred pounds less, second
291 class, 36c. per hundred pounds less; third class, 32c.
per hundred pounds less; fourth class, 29c. per hundred pounds less; fifth class, 22c. per hundred pounds less; sixth class, 17c. per hundred pounds less and make the same profit as I now do. I could also increase my business to such an extent by selling at these reduced prices, that I could and would reduce rate of profit, as I could double my sales without doubling my expenses, for these reduced rates would enable me to double my sales.

I have four stores and sell all classes of merchandise and it would take an expert accountant six months to compute the ex-

act amount of reduction on each article in which I deal, the articles being too numerous.

Cross-Intr. No. 5. If you say that reduction of the rates to LaGrange will increase the tonnage of traffic to that place, what would be its effect upon the tonnage of those places that have heretofore sold goods in competition with LaGrange?

Ans. The increased tonnage to LaGrange would partly decrease the tonnage to the cities that have heretofore been favored, but part of LaGrange's increase in tonnage would be on account of an opening up of new territory, away from the railroads, and in the country from LaGrange, and also by cheapening prices. This latter will be a great factor in increasing tonnage.

Intr. No. 6. If you say that low or preferential rates have the effect to increase the population of a particular locality and to induce the investment of capital there, explain how the population or capital of LaGrange will be increased, if it is given the same, but no lower rates than other local stations between West Point and Atlanta.

Ans. If LaGrange is given equal rates with her competitors, it will place LaGrange on equal footing with them, and LaGrange could certainly increase her population and investment of capital in selling merchandise in LaGrange territory, that has heretofore been sold by merchants in more favored cities

FULLER E. CALLAWAY.

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292 DEPOSITION OF E. R. BRADFIELD.

In the Circuit Court of the United States for the Southern District of Alabama.

The Interstate Commerce Commission
vs. In Equity No. 207.
Louisville & Nashville Railroad Co., Western Railway of Alabama and the Atlanta & West Point Railroad Co.

Direct Interrogatories and Answers.

Interrogatories filed in the above entitled cause on behalf of the complainant therein to E. R. Bradfield, of LaGrange, Georgia.

The witness, E. R. BRADFIELD, being duly sworn to speak the truth, the whole truth and nothing but the truth, deposes as follows:

Intr. No. 1. What is your name and residence and in what occupation or business are you engaged?

Ans. E. R. Bradfield, LaGrange, Ga., merchant.

Intr. No. 2. If you say that you reside at LaGrange, Ga., state how long you have so resided and how long you have been engaged in business there?

Ans. I have resided in LaGrange forty-five years and have been engaged in business there for twenty-five years.

Intr. No. 3. State whether merchants of Opelika, Ala., and Atlanta, Ga., sell goods at LaGrange and do business in territory around LaGrange.

Ans. They do.

Intr. No. 4. What articles of traffic or merchandise constitute the bulk of the traffic shipped from New Orleans, La., to LaGrange?

Ans. Groceries and domestics.

Intr. No. 5. State whether LaGrange merchants in selling in territory in and around LaGrange, sugar, molasses and rice, and also other articles of merchandise shipped from New Orleans come in competition with Atlanta and Opelika merchants and whether or not Atlanta and Opelika merchants have the advantage in such competition.

Ans. We come in competition with them and they have the advantage in rates.

293 Intr. No. 6. If in answer to the preceding interrogatory, you state that LaGrange merchants are at a disadvantage in such competition, state from what that disadvantage results.

Ans. The rates are greatly in favor of Atlanta and Opelika over LaGrange.

Intr. No. 7. What are the carload rates from New Orleans to LaGrange on sugar, molasses and rice? What are the less than carload rates from New Orleans to LaGrange on those articles?

Ans. The less than carload rate is as follows per hundred pounds: sugar 38c., molasses 37c., and rice 34/2c. I cannot find out the carload rate.

Intr. No. 8. What are the carload rates from New Orleans on Hogansville, Newnan, Palmetto, Fairburn, and Atlanta on sugar, molasses and rice? What are the less than carload rates from New Orleans to those points on sugar, molasses and rice?

Ans. I do not know.

Intr. No. 9. What are the carload and less than carload rates on sugar, molasses and rice, from New Orleans to Opelika? What are the carload and less than carload rates on first-class goods from New Orleans to Opelika?

Ans. I do not know.

Intr. No. 10. What are the rates from Opelika to LaGrange on sugar, molasses and rice and first-class goods?

Ans. I do not know the exact rates.

Intr. No. 11. If in your answers to preceding interrogatories, you have stated that LaGrange is placed at a disadvantage in competition with Atlanta and Opelika merchants in territory in and around LaGrange, and that this disadvantage results from discriminations in rates, give specific examples of such discriminations and state the extent of the injury to LaGrange, if any, as a city, mercantile center or jobbing point.

Ans. An Atlanta merchant can ship goods from all points to Atlanta and then reship them to LaGrange cheaper than a LaGrange merchant can ship the same goods direct to La-
Grange. The same thing can be said of an Opelika
294 merchant. Drummers all refuse to give us the rates
they give to those points for the reason that the rates are higher to LaGrange even if the mileage is less.

Intr. No. 12. State whether or not Atlanta merchants can sell goods in Hogansville, Newnan, Palmetto, and Fairburn, and also whether or not LaGrange merchants can sell goods at either of those places in competition with Atlanta merchants. If LaGrange merchants cannot compete with Atlanta merchants at those localities explain why this is so.

Ans. Atlanta merchants can and do sell goods at all of those points. LaGrange merchants sell a few goods at those points but are greatly handicapped by the higher rates which they have to pay on all classes of freight. In fact, she has to lose so much in order to compete with Atlanta merchants that this trade is hardly profitable to her.

Intr. No. 13. State whether traffic from New Orleans to LaGrange is shipped under a through bill of lading, naming an aggregate through rate.

Ans. It is.

Intr. No. 14. Are goods ever shipped from New Orleans to LaGrange in carloads? If so, state whether or not they are in such case brought through LaGrange in the same cars in which they are originally loaded at New Orleans.

Ans. I do not think goods are shipped from New Orleans to LaGrange in carloads. It is a very rare occurrence if they are.

Intr. No. 15. If you say that goods are seldom shipped from New Orleans to LaGrange in carloads, state why this is so.

Ans. Because the discriminations in rates prevents LaGrange merchants from doing a very large wholesale business and consequently they hardly ever handle that much at one time.

Intr. No. 16. On shipments of goods from New Orleans to Hogansville, Newnan, Palmetto and Fairburn are the terminal expenses at those points greater or less per hundred pounds than at LaGrange or the same?

Ans. I should say that they were about the same.

295 Intr. No. 17. How many employes has the railroad company at LaGrange engaged in handling all the freight at that point from all localities and all directions, and what is the pay per month of such employes?

Ans. There are about seven employes and their gross salary is not over three hundred dollars per month.

Intr. No. 18. State if you can, the total tonnage of traffic per month or per annum at LaGrange and what the pay of the employes engaged in handling that traffic amounts to per hundred pounds.

Ans. I do not know.

Intr. No. 19. State the population of and mercantile and manufacturing enterprises of LaGrange, Opelika, Hogansville, Newnan, Palmetto, and Fairburn.

Ans. LaGrange: Population about five thousand, about forty mercantile establishments, two cotton mills, foundry, planing mills, carriage factory, creamery, electric lights and water works, two railroads, and several minor industries. Opelika is about the same as LaGrange in population and other respects. Newnan is also about the same as LaGrange. Hogansville has a population of about eight hundred, fifteen or twenty stores, Palmetto has about seven hundred and fifty population and about fifteen stores. Fairburn has about nine hundred population and about twenty stores and one harness factory.

Intr. No. 20. What other railways, if any, besides the Atlanta & West Point Railway reach LaGrange? What other railways, if any, reach Hogansville, Newnan, Palmetto and Fairburn?

Ans. The Macon & Birmingham also reaches LaGrange. No others reach Hogansville, Palmetto or Fairburn. The Central also reaches Newnan.

Intr. No. 21. Do transportation rates or charges enter into and affect the prices at which yourself and other LaGrange merchants can sell goods to consumers in and around LaGrange?

Ans. They do.

Intr. No. 22. How do prices of goods affect their sale or consumption? Are more goods sold to consumers when they are cheap or when they are high? What is your

296 opinion and experience in reference to this matter?

Ans. Low prices increase the sale and consumption of goods and high prices have just the opposite effect.

Intr. No. 23. How will a reduction of the rates to LaGrange so as to make them not higher than rates to longer distanced competitors, affect the tonnage of traffic to LaGrange? Will it increase or diminish that tonnage? Give your reasons for whatever opinion you may express.

Ans. It would increase the tonnage for the reason that we could sell goods cheaper and more of them and consequently would buy more.

Intr. No. 24. What effect, if any, do relatively low or preferential rates to a locality, have in increasing the population of such localtity and inducing the investment of capital there, and in promoting the prosperity of such locality in other respects?

Ans. It would have all of the above named effects.

Intr. No. 25. What effects, if any, do relatively high rates to a community or rates which discriminate against a locality, have on its prosperity and progress in the respects named in the preceeding interrogatory?

Ans. It has just the opposite effect from that named in the preceding interrogatory.

Intr. No. 26. Do you know, or can you set forth from any other matter, or thing, which may be of benefit or advantage to the parties at issue in this cause, or either of them, or that may be material to the subject of this your examination, or the matters in question in this cause?

If yea, set forth the same fully and at large in your answer.

Ans. I know of nothing further.

297 Cross-Interrogatories and Answers.

Cross-Inter. No. 1. If you state that merchants of Opelika or Atlanta sell goods at LaGrange, or in territory around LaGrange, please specify to which of the lettered or numbered classes, used in the Southern States Freight Association Classification, the goods to which you refer belong; and state what kind of goods they are.

Ans. I am not familiar with that classification, but the merchants of Opelika and Atlanta sell nearly all classes of goods here?

Cross-Intr. No. 2. What are the carload and less than carload rates on sugar, molasses and rice, from New Orleans to Opelika, Hogansville, Newnan, Palmetto, Fairburn, and Atlanta, respectively?

Ans. I do not know.

Cross-Intr. No. 3. State the population of, and the mercantile and manufacturing enterprises of Atlanta.

Ans. Atlanta has a population of about ninety thousand

and her mercantile and manufacturing enterprises are too numerous to mention. They are in proportion to a city of that size.

Cross-Intr. No. 4. If you state that transportation rates enter into and affect the prices at which yourself and other LaGrange merchants can sell to consumers in and around LaGrange, state how much per hundred pounds you would reduce the price at which you sell goods to your customers, in and around LaGrange. State the precise amount of reduction on each article in which you deal.

Ans. I would reduce the price so much per hundred pounds as the rate was decreased per hundred pounds. The precise amount would depend upon the amount of the reduction.

Cross-Intr. No. 5. If you say that reduction of the rates to LaGrange will increase the tonnage of traffic to that place, what would be its effect upon the tonnage of those places that heretofore sold goods in competition with LaGrange?

Ans. I do not think that it would make any practical difference although it might slightly decrease the ton-
298 nage to those places.

Cross-Intr. No. 6. If you say that low or preferential rates have the effect to increase the population of a particular locality and to induce the investment of capital there, explain how the population or capital of LaGrange will be increased, if it is given the same but no lower rates than other local stations between West Point and Atlanta.

Ans. If LaGrange was given lower rates, she could sell goods cheaper and enlarge her trade both retail and wholesale; this would stimulate business and promote prosperity in every respect.

E. R. BRADFIELD.

299 DEPOSITION OF D. A. DANSBY.

In the Circuit Court of the United States for the Southern District of Alabama.

The Interstate Commerce Commission
vs. In Equity No. 207.
Louisville & Nashville Railroad Co., Western Railway of Alabama and Atlanta & West Point Railroad Co.

Interrogatories filed in the above entitled cause on behalf of the complainant to D. A. Dansby, of LaGrange, Ga.

Direct Interrogatories and Answers.

The witness being duly sworn to speak the truth, the whole truth and nothing but the truth, deposes as follows:

Intr. No. 1. What is your name and residence and in what occupation or business are you engaged?

Ans. D. A. Dansby, LaGrange, Ga., merchant.

Intr. No. 2. If you say that you reside at LaGrange, Ga., state how long you have so resided and how long you have been engaged in business there.

Ans. I have resided here about forty years and have been engaged in my present business about ten years.

Intr. No. 3. State whether merchants of Opelika, Ala., and Atlanta, Ga., sell goods and do business at LaGrange and in territory around LaGrange.

Ans. Yes.

Inter. No. 4. What articles of traffic or merchandise constitute the bulk of the traffic shipped from New Orleans, La., to LaGrange?

Ans. Sugar, molasses, rice and rice bran.

Inter No. 5. State whether LaGrange merchants in selling in territory in and around LaGrange, sugar, molasses and rice, and also other articles of merchandise, shipped from New Orleans, come in competition with Atlanta and Opelika merchants and whether or not Atlanta and Opelika merchants have an advantage in such competition.

Ans. Yes; a decided advantage.

Inter. No. 6. If in answer to the preceeding interrogatory, you state that LaGrange merchants are at a disadvantage in such competition, state from what that disadvantage re-

300 sults.

Ans. From discriminations in freight rates against LaGrange.

Intr. No. 7. What are the carload rates from New Orleans to LaGrange on sugar, molasses and rice? What are the less than carload rates from New Orleans to LaGrange on those articles?

Ans. I do not know the exact rates on these articles but I do know that they are higher than rates to other points of equal distance, because the wholesale houses which I represent, refuse to give me the same price on goods delivered as they do these other points, because of the higher rates to LaGrange.

Intr. No. 8. What are the carload rates from New Orleans to Hogansville, Newnan, Palmetto, Fairburn and Atlanta on sugar, molasses and rice? What are the less than carload rates from New Orleans to points on sugar, molasses and rice?

Ans. I do not know.

Intr. No. 9. What are the carload and less than carload rates on sugar, molasses and rice from New Orleans to Opelika? What are the carload and less than carload rates New Orleans to Opelika on first-class goods?

Ans. I do not know.

Inter. No. 10. What are the rates from Opelika to LaGrange on sugar, molasses and rice and first-class goods?

Ans. I do not know.

Intr. No. 11. If in your answer to preceding interrogatories you have stated that LaGrange is placed at a disadvantage in competition with Opelika and Atlanta merchants in territory in and around LaGrange and that this disadvantage results from discriminations in rates, give specific examples of such discriminations and state the extent of the injury to LaGrange, if any, as a city, mercantile center or jobbing point?

Ans. I know from my own experience that Atlanta gets cheaper rates than LaGrange because Atlanta merchants can buy goods from the wholesale houses which I represent and reship them to LaGrange, delivered, cheaper than I can get them direct from the house. Of course this greatly handicaps LaGrange and gives Atlanta merchants a very material advantage in their competition for the trade around LaGrange.

301 Intr. No. 12. State whether or not Atlanta merchants can sell goods in Hogansville, Newnan, Palmetto, and Fairburn and also whether or not LaGrange merchants can sell goods at either of those places in competition with Atlanta merchants. If LaGrange merchants cannot compete with Atlanta merchants at those points explain why this is so.

Ans. Atlanta merchants can and do sell goods at all of those points because of the more favorable rates which they get.

Intr. No. 13. State whether traffic from New Orleans to

LaGrange in carloads is shipped under a through bill of lading, naming an aggregate through rate.

Ans. Yes we get a through bill of lading.

Intr. No. 14. Are goods ever shipped from New Orleans to LaGrange in carloads? If so, state whether or not they are in such case brought to LaGrange in the same cars in which they are originally loaded.

Ans. Occasionally, and in the same cars in which they are loaded.

Intr. No. 15. If you say that goods are seldom shipped from New Orleans to LaGrange in carloads, explain why this is so.

Ans. We would ship more carloads if we had better rates of freight.

Intr. No. 16. On shipments of goods from New Orleans to Hogansville, Newnan, Palmetto and Fairburn, are the terminal expenses at those points greater or less that at LaGrange or the same?

Ans. About the same.

Intr. No. 17. How many employes has the railroad company at LaGrange engaged in handling all the freight, from all localities and all directions and what is the pay per month of such employes?

Ans. The Atlanta & West Point has seven employes and the gross amount of their salary is between three hundred and three hundred and twenty-five dollars.

Intr. No. 18. State, if you can, the total tonnage of traffic per month or per annum at LaGrange, and what the pay of the employes, engaged in handling that traffic, amounts to per hundred pounds.

Ans. I do not know.

302 Intr. No. 19. State the population of and mercantile and manufacturing enterprises of LaGrange, Opelika, Hogansville, Newnan, Palmetto and Fairburn.

Ans. LaGrange has about five thousand people, forty stores, cotton mills, planing mills, creamery, water works, electric lights, colleges, two railroads and other smaller enterprises. Opelika has about five thousand people, forty or forty-five business houses, and the average number of smaller industries incident to a town of that size. Hogansville has about seven hundred and fifty people and about twenty stores. Newnan has about forty-five hundred people and about the same number of manufacturing and mercantile enterprises as LaGrange. Palmetto has about seven hundred population and fifteen or twenty stores. Fairburn has about nine hundred population and the same number of stores.

Intr. No. 20. What other railways, if any, reach LaGrange

besides the Atlanta & West Point? What other railways, if any, reach Hogansville, Newnan, Palmetto and Fairburn?

Ans. The Macon & Birmingham reaches LaGrange, the Central reaches Newnan and no others reach the other points.

Intr. No. 21. Do transportation rates or charges enter into and effect the prices at which yourself and other LaGrange merchants can sell goods to consumers in and around LaGrange?

Ans. They do.

Intr. No. 22. How do prices of goods affect their sale or consumption? Are more goods sold to consumers when they are cheap or when they are high? What is your opinion and experience in reference to this matter?

Ans. Low prices increase the sale and consumption of goods and high prices have the reverse effect.

Intr. No. 23. How will a reduction of the rates to LaGrange so as to make them not higher than rates to longer distanced competitors, effect the tonnage of traffic to LaGrange? Will it increase or diminish that tonnage? Give your reason for whatever opinion you may express on this point.

Ans. It would increase the tonnage of traffic to LaGrange for we could sell goods much cheaper than we do now and could sell more of them.

303 Intr. No. 24. What effect, if any, do relatively low or preferential rates to a locality have in increasing the population of such locality and inducing the investment of capital there, and in promoting the prosperity of such locality in other respects?

Ans. It has all of the above named effects.

Intr. No. 25. What effect, if any, do relatively high rates to a locality, or rates which discriminate against a locality, have on its prosperity and progress in the respects named in the preceding interrogatory?

Ans. It decreases the population, keeps away capital and injures a locality in every respect.

Intr. No. 26. Do you know or can you set forth any other matter, or thing, which may be of benefit to the parties at issue in this cause, or either of them, or that may be material to the subject of this your examination, or the matters in question in this cause? If yea, set forth the same fully and at large in your answer.

Ans. I know of nothing further.

304 Cross-Interrogatories and Answers.

Cross-Intr. No. 1. If you state that merchants of Opelika or Atlanta sell goods at LaGrange, or in territory around La-

range, please specify to which of the lettered or numbered classes, used in the Southern States Freight Association Classification, the goods to which you refer belong and state what kind of goods they are.

Ans. They sell goods of all the lettered and numbered classes of that classification.

Cross-Intr. No. 2. What are the carload and less than carload rates on sugar, molasses and rice from New Orleans to Opelika, Hogansville, Newnan, Palmetto, Fairburn and Atlanta, respectively?

Ans. I do not know.

Cross-Intr. No. 3. State the population and the mercantile and manufacturing enterprises of Atlanta.

Ans. Atlanta has a population of about ninety-five thousand and many large manufacturing and mercantile enterprises.

Cross-Intr. No. 4. If you state that transportation or charges enter into and effect the prices at which yourself and other LaGrange merchants can sell goods to consumers in and around LaGrange, state how much per hundred pounds you would reduce the price at which you sell goods to your customers, in and around LaGrange. State the precise amount of reduction on each article in which you deal.

Ans. It would depend altogether on the amount of the reduction in the freight rates.

[Cross-]Inter. No. 5. If you say that reduction of the rates to LaGrange will increase the tonnage of traffic to that place, what would be its effect upon the tonnage of those places that heretofore sold goods in competition with LaGrange?

Ans. It would slightly decrease the tonnage I suppose.

Cross-Inter. No. 6. If you say that low or preferential rates have the effect to increase the population of a particular locality and to induce the investment of capital there, explain how the population of capital of LaGrange will be increased,
305 if it is given the same but no lower rates than other local stations between West Point and Atlanta.

Ans. If given these lower rates she would have lower prices and a larger trade. These two things would promote the prosperity of any place. D. A. DANSBY.

306 DEPOSITION OF T. S. BRADFIELD.

In the Circuit Court of the United States for the Southern District of Alabama.

The Interstate Commerce Commission
vs. In Equity No. 207.
The Louisville & Nashville R. R. Co., The Western Railway of Alabama and The Atlanta & West Point R. R. Co.

Direct Interrogatories and Answers.

Interrogatories filed in the above entitled cause on behalf of the complainant therein to T. S. Bradfield of LaGrange, Ga.

The witness, T. S. BRADFIELD, being duly sworn to speak the truth, the whole truth and nothing but the truth, deposes as follows:

Intr. No. 1. What is your name and residence and in what occupation or business are you engaged?

Ans. T. S. Bradfield, druggist, LaGrange, Ga.

Intr. No. 2. If you say you reside at LaGrange, Ga., state how long you have so resided and how long you have been engaged in business there.

Ans. I have resided here about forty-four years and have been engaged in business here all of that time.

Intr. No. 3. State whether merchants of Opelika, Ala., and Atlanta, Ga., sell goods and do business at LaGrange and in territory around LaGrange.

Ans. Yes, they do.

Intr. No. 4. What articles of merchandise or traffic constitute the bulk of the traffic shipped from New Orleans, La., to LaGrange?

Ans. Drugs and heavy groceries.

Intr. No. 5. State whether LaGrange merchants in selling in territory in and around LaGrange, sugar, molasses and rice, and also other articles of merchandise shipped from New Orleans to LaGrange, come in competition with Atlanta and Opelika merchants and whether or not Atlanta and Opelika merchants have an advantage in such competition?

307 Ans. Yes, we do and the advantage is with them.

Intr. No. 6. If in answer to the preceding interrogatory you say that LaGrange merchants are at a disadvantage in such competition, state from what that disadvantage results.

Ans. It is on account of the higher rates to LaGrange than to those places.

Intr. No. 7. What are the carload rates from New Orleans to LaGrange on sugar, molasses and rice? What are the less than carload rates from New Orleans to LaGrange on those articles?

Ans. I do not know.

Intr. No. 8. What are the carload and less than carload rates from New Orleans to Hogansville, Newnan, Palmetto, Fairburn and Atlanta on sugar, molasses and rice?

Ans. I do not know.

Intr. No. 9. What are the carload and less than carload rates on sugar, molasses and rice from New Orleans to Opelika? What are the carload and less than carload rates on first-class goods from New Orleans to Opelika?

Ans. I do not know.

Intr. No. 10. What are the rates from Opelika to LaGrange on sugar, molasses and rice?

Ans. I do not know. I have never handled that class of goods.

Intr. No. 11. If in your answer to preceding interrogatories, you have stated that LaGrange merchants are placed at a disadvantage in competition with Opelika and Atlanta merchants in territory in and around LaGrange, and that this disadvantage results from discriminations in rates give specific examples of such discriminations and state the extent of the injury to LaGrange, if any, as a city, mercantile center or jobbing point.

Ans. I am not familiar with the exact rates, but I know from my own personal experience that we are discriminated against on all classes of goods. Only a short time ago I was attempting to sell a bill of white lead in competition with a West Point druggist but could not compete with him because he could buy his 1-2c. per pound less than I could, delivered. I am handicapped in the same proportion on all other
308 goods which I handle in my line.

Intr. No. 12. State whether or not Atlanta merchants can sell goods in Hogansville, Newnan, Palmetto and Fairburn, and also whether or not LaGrange merchants can sell goods at either of those places in competition with Atlanta merchants. If LaGrange merchants cannot compete with Atlanta merchants at either of those localities explain why this is so.

Ans. We cannot because we have poorer freight rates. I can sell nothing in the drug line there because they can buy cheaper in Atlanta.

Intr. No. 13. State whether traffic from New Orleans to LaGrange is shipped under a through bill of lading naming an aggregate through rate.

Ans. It is.

Intr. No. 14. Are goods ever shipped from New Orleans to LaGrange in carloads? If so, state whether or not they are brought in the same cars in which they are originally loaded at New Orleans.

Ans. I think not.

Intr. No. 15. If you say that goods are seldom shipped in carloads from New Orleans to LaGrange explain why this is so.

Ans. Because we are unable to do anything like a wholesale business here on account of the discriminations in rates against LaGrange.

Intr. No. 16. On shipments of goods from New Orleans to Hogansville, Newnan, Palmetto, and Fairburn, are the terminal expenses at those points greater or less per hundred pounds than at LaGrange?

Ans. There is no material difference in the terminal expenses at any of those points and LaGrange.

Intr. No. 17. How many employes has the railroad company at LaGrange engaged in handling all the freight from all localities and directions and what is the pay per month of such employes?

Ans. There are about seven employes engaged in handling all the freight for the Atlanta & West Point and I should think that their gross salary would not be over three hundred dollars.

309 Intr. No. 18. State, if you can, the total tonnage of traffic per month or per annum at LaGrange, and what the pay of the employes engaged in handling that traffic amounts to per hundred pounds.

Ans. I do not know.

Intr. No. 19. State the population and mercantile and manufacturing enterprises of LaGrange, Opelika, Hogansville, Newnan, Palmetto and Fairburn.

Ans. LaGrange has a population of about five thousand, forty mercantile establishments, two cotton mills, foundry, creamery, planing mills, grist mills, etc. Newnan is about the same size as LaGrange with about the same industries. Opelika is also about the same size as LaGrange with the same industries. Hogansville has a population of about seven hundred, one oil mill and twenty stores, Palmetto has about seven hundred population, one cotton mill and about twenty stores. Fairburn has about nine hundred population and about twenty stores.

Intr. No. 20. What other railways, if any, besides the Atlanta & West Point reach LaGrange? What other railways, if any, reach Hogansville, Newnan, Palmetto and Fairburn?

Ans. The Macon & Birmingham reaches LaGrange and the Central also reaches Newnan. No others reach the other points.

Intr. No. 21. Do transportation rates or charges enter into and affect the prices at which yourself and other LaGrange merchants can sell goods to consumers in and around LaGrange?

Ans. They do.

Intr. No. 22. How do prices of goods affect their sale or consumption? Are more goods sold to consumers when they are cheap or when they are high? What is your opinion and experience in reference to this matter?

Ans. Low prices increase the sale and consumption of goods and high prices decrease the sale and consumption of them.

Intr. No. 23. How will a reduction of the rates to LaGrange so to make them not higher than rates to longer distanced competitors affect the tonnage or traffic to LaGrange? Will it increase or diminish that tonnage? Give your reason for whatever opinion you may express on this point.

310 Ans. It will increase the tonnage of traffic by enlarging our business.

Intr. No. 24. What effect, if any, do relatively low or preferential rates to a locality have in increasing the population of such locality and inducing the investment of capital there, and in promoting the prosperity of such locality in other respects?

Ans. It has all of those effects.

Intr. No. 25. What effect, if any, do relatively high rates to a locality or rates which discriminate against a locality, have on its prosperity and progress in the respects named in the preceding interrogatory?

Ans. It has just the opposite effect from that named in the preceding interrogatory.

Intr. No. 26. Do you know, or can you set forth any other matter or thing, which may be of benefit to the parties at issue in this cause or either of them, or that may be material to the subject of this your examination, or the matters in question in this cause? If yea, set forth the same fully and at large in your answer.

Ans. I know of nothing further.

311 Cross-Interrogatories and Answers.

Cross-Intr. No. 1. If you state that merchants of Opelika or

Atlanta sell goods at LaGrange or in territory around LaGrange, please specify to which of the lettered or numbered classes, used in the Southern States Freight Association Classification, the goods to which you refer belong and state what kind of goods they are.

Ans. They sell goods of all the lettered and numbered classes used in that classification.

Cross-Intr. No. 2. What are the carload and less than carload rates on sugar, molasses and rice from New Orleans to Hogansville, Opelika, Newnan, Palmetto and Fairburn?

Ans. I do not know.

Cross-Intr. No. 3. State the population of and mercantile and manufacturing enterprises of Atlanta?

Ans. Atlanta has a population of about ninety thousand and large manufacturing and mercantile enterprises.

Cross-Inter. No. 4. If you state that transportation rates or charges enter into and affect the prices at which yourself and other LaGrange merchants can sell goods to consumers in and around LaGrange state how much per hundred pounds you would reduce the price at which you sell goods to your customers, in and around LaGrange. State the precise amount of reduction on each article in which you deal.

Ans. I would reduce it so much per hundred pounds as the difference in the present rate and the reduced rate would be per hundred pounds.

Cross-Intr. No. 5. If you say that reduction of the rates to LaGrange will increase the tonnage of traffic to that place, what would be its effect upon the tonnage of those places that have heretofore sold goods in competition with LaGrange?

Ans. It might partly decrease the tonnage to those places by enabling LaGrange to sell goods in her own territory which had hitherto been sold by those places on account of an unfair and unjust discrimination in rates against her.

312 Cross-Intr. No. 6. If you say that low or preferential rates have the effect to increase the population of a particular locality and to induce the investment of capital there, explain how the population or capital of LaGrange will be increased, if it is given the same but no lower rates than other local stations between West Point and Atlanta.

Ans. By putting us on an equal footing with our competitors and thereby enabling us to increase our trade and do a larger business every way than we do now.

T. S. BRADFIELD.

313 DEPOSITION OF H. H. CHILDS.

In the Circuit Court of the United States for the Southern District of Alabama.

The Interstate Commerce Commission
vs. In Equity, No. 207.
The Louisville & Nashville R. R. Co., The Western Railway of Alabama and The Atlanta & West Point R. R. Co.

Direct Interrogatories and Answers.

Interrogatories filed in the above entitled cause on behalf of the complainant therein to H. H. Childs, of LaGrange, Ga.

The witness, H. H. CHILDS, being duly sworn to speak the truth, the whole truth and nothing but the truth, does depose as follows:

Intr. No. 1. What is your name and residence and in what occupation or business are you engaged?

Ans. H. H. Childs, LaGrange, Ga., furniture dealer.

Intr. No. 2. If you say that you reside at LaGrange, Ga., state how long you have so resided and how long you have been engaged in business there?

Ans. I have resided at LaGrange for about three years and have been engaged in business there all of that time.

Intr. No. 3. State whether merchants of Opelika, Ala., and Atlanta, Ga., sell goods and do business at LaGrange and in territory around LaGrange.

Ans. They do.

Intr. No. 4. What articles of traffic constitute the bulk of the traffic shipped from New Orleans, La., to LaGrange?

Ans. Sugar, molasses and rice.

Intr. No. 5. State whether LaGrange merchants in selling in territory in and around LaGrange, sugar, molasses and rice, and also other articles of merchandise shipped from New Orleans, come in competition with Atlanta and Opelika merchants and whether or not Atlanta and Opelika merchants have an advantage in such competition?

314 Ans. We do, and the advantage is all with them.

Intr. No. 6. If in answer to the preceding interrogatory you state that LaGrange Merchants are at a disadvantage in such competition, state from what that disadvantage results.

Ans. From discriminating rates against LaGrange.

Intr. No. 7. What are the carload rates from New Orleans

to LaGrange on sugar, molasses and rice? What are the less than carload rates from New Orleans to LaGrange on those articles?

Ans. The less than carload rates are as follows per hundred pounds: sugar, 38c.; molasses, 37c.; rice, 34 1-2c.. I do not think that we have a car load rate on those articles.

Intr. No. 8. What are the carload rates from New Orleans to Hogansville, Newnan, Palmetto, Fairburn and Atlanta on sugar, molasses and rice? What are the less than carload rates from New Orleans to those points on sugar, molasses and rice?

Ans. The less than carload rate on sugar to those points is as follows: to Hogansville, 36c; to Newnan, 34c.; to Palmetto, 33c.; to Fairburn, 32c.; to Atlanta, 21c. The carload rate on sugar to Atlanta is 18c. I have been unable to ascertain the exact rates on the other articles.

Intr. No. 9. What are the carload and less than carload rates on sugar, molasses and rice from New Orleans to Opelika? What are the carload and less than carload rates on first class goods from New Orleans to Opelika?

Ans. I do not know the molasses and rice rate, but the carload rate on sugar is 18c., and the less than carload rate is 21c. Less than carload rate on first class goods from New Orleans to Opelika is $1.03 per hundred pounds.

Intr. No. 10. What are the rates from Opelika to LaGrange on sugar, molasses and rice and first class goods?

Ans. I do not [know] the exact rate on sugar, molasses and rice from Opelika to LaGrange. The rate on first class goods is 32c. per hundred pounds.

315 Intr. No. 11. If in your answers to preceding interrogatories you have stated that LaGrange is placed at a disadvantage with Atlanta and Opelika merchants in territory in and around LaGrange, and that this disadvantage results from discrimination in rates, give specific examples of such discriminations and state the extent of the injury to LaGrange, if any, as a city, mercantile center, or jobbing point.

Ans. The disadvantage results from the fact that we are hopelessly unable to compete with Atlanta and Opelika merchants on account of the more favorable rates which they receive. By the time we have scaled our prices down to meet the price which they are able to offer on account of their reduced rates, all of our profits are gone. For instance, the rate to LaGrange is $1.43 per hundred pounds on first-class goods from New Orleans; Atlanta's rate on first-class goods from the same place is $1.03 per hundred pounds, which makes a difference of 40c. per hundred pounds in Atlanta's favor, and where competition is strong this is a very material difference for when it comes

to selling goods, no matter how small the difference, the cheapest always secures the trade. Atlanta can reship these goods received from New Orleans, to any town between LaGrange and Atlanta at an aggregate cheaper rate than LaGrange can ship them direct from New Orleans. The same discrimination can be seen by comparing the rates from New Orleans to Opelika and to LaGrange.

Intr. No. 12. State whether or not Atlanta merchants can sell goods in Hogansville, Newnan, Palmetto and Fairburn, and also whether or not LaGrange merchants can sell goods at either of those places in competition with Atlanta merchants. If LaGrange merchants cannot compete with Atlanta merchants at those localities, explain why this is so.

Ans. Atlanta merchants sell goods at all of those localities and LaGrange merchants cannot compete with them as explained in preceding interrogatory. The difference in rates makes such a material difference even on a single article that it drives all of that trade to Atlanta.

Intr. No. 13. State whether traffic from New Orleans to LaGrange is shipped under a through bill of lading, naming an aggregate through rate.

Ans. It is.

Intr. No. 14. Are carloads ever shipped from New Orleans to LaGrange? If so state whether or not they are in such case brought to LaGrange in the same cars in which they are originally loaded at New Orleans?

316 Ans. Very seldom, but when they are they come straight through in the same cars.

Intr. No. 15. If you say that goods are seldom shipped from New Orleans to LaGrange in carloads, explain why this is so.

Ans. It is on account of the high rates to LaGrange, which prevents her from handling large quantities of goods, such as for wholesale purposes.

Intr. No. 16. On shipments of goods from New Orleans to Hogansville, Newnan, Palmetto and Fairburn, are the terminal expenses at those points greater or less than at LaGrange, or the same?

Ans. I should say that they are about the same.

Intr. No. 17. How many employes has the railroad company at LaGrange at LaGrange engaged in handling all the freight from all localities and all directions, at that point and what is the pay per month of such employes?

Ans. They have about seven employes and I should think that they would average about fifty dollars per month.

Intr. No. 18. State, if you can, the total tonnage of traffic per month per annum at LaGrange, and what the pay of the

employes engaged in handling that traffic amounts to per hundred pounds.

Ans. I do not know.

Int. No. 19. State the population of the mercantile and manufacturing enterprises of LaGrange, Opelika, Hogansville, Newnan, Palmetto and Fairburn.

Ans. LaGrange has a population of five thousand, two railroads, two female colleges, cotton mills, planing mills, foundry, carriage factory, creamery, grist mills, water works and electric lights and about forty good mercantile establishments. I cannot specify the enterprises of Opelika, but they are of about the same size and number of LaGrange. Newnan has a population of forty-five hundred, about forty stores, fertilizer works, cotton mill, two railroads, electric lights and water works. Palmetto has about seven hundred population, cotton mill and about fifteen stores. Hogansville has a population of about seven hundred and fifty, about twenty stores and one oil mill.

317 Fairburn has a population of nine hundred, fifteen stores and one harness factory.

Intr. No. 20. What other railways, if any, besides the Atlanta & West Point Railroad, reach LaGrange? What other railways, if any, reach Hogansville, Newnan, Palmetto and Fairburn?

Ans. The Macon & Birmingham reaches LaGrange and the Central reaches Newnan. No others reach the other points.

Intr. No. 21. Do transportation rates enter into and affect the prices at which yourself and other LaGrange merchants can sell goods in and around LaGrange?

Ans. They do.

Intr. No. 22. How do prices of goods affect their sale or consumption? Are more goods sold to consumers when they are cheap of when they are high? What is your opinion and experience in reference to this matter?

Ans. Low prices increase the sale and consumption and high prices decrease the sale and consumption.

Intr. No. 23. How will a reduction of the rates to LaGrange so as to make them not higher than rates to longer distanced competitors, affect the tonnage of traffic to LaGrange? Will it increase or diminish that tonnage? Give your reason for whatever opinion you may express on this point.

Ans. It would increase the tonnage for the reason that it would enable us to sell more goods by being able to sell them cheaper.

Intr. No. 24. What effect if any, do relatively low or preferential rates to a locality have in increasing the population of such locality and inducing the investment of capital there and in promoting the prosperity of such locality in other respects?

Ans. They increase the population, induce capital to invest here and in every way promote prosperity.

Intr. No 25. What effect, if any, do relatively high rates to a locality or rates which against a locality, have on its prosperity and progress in the respects named in the preceding interrogatory?

Ans. It has just the opposite effect from that named in the answer to the preceding interrogatory.

318 Intr. No. 26. Do you know or can you set forth any other matter, or thing, which may be of benefit to the parties at issue in this cause or either of them, or that may be material to the subject of this your examination, or the matters in question in this cause? If yea, set forth the same fully and at large in your answer.

Ans. I know of nothing further.

319 Cross-Interrogatories and Answers.

Cross-Intr. No. 1. If you state that merchants of Opelika or Atlanta sell goods at LaGrange, or in territory around LaGrange, please specify to which of the lettered or numbered classes used in the Southern States Freight Association Classification, the goods to which you refer belong, and state what kind of goods they are.

Ans. I am unable to classify them according to that classification, but all classes are shipped.

Cross-Intr. No. 2. What are the carload and less than carload rates on sugar, molasses and rice, from New Orleans to Hogansville, Opelika, Newnan, Palmetto, Fairburn and Atlanta?

Ans. The following are the less than carload rates from Opelika to those points on sugar: to Hogansville, 36c.; to Newnan, 34c.; to Palmetto, 33c.; to Fairburn, 32c.; to Atlanta, 21c. The carload rate on sugar to Atlanta is 18c. I do not know the rates on the other articles.

Cross-Inter. No. 3. State the population of and the mercantile and manufacturing enterprises of Atlanta.

Ans. She has a population of about ninety thousand and large manufacturing and mercantile establishments.

Cross-Intr. No. 4. If you state that transportation rates or charges enter into and effect the prices at which yourself and other LaGrange merchants can sell goods to consumers in and around LaGrange, state how much per hundred pounds you would reduce the price at which you sell goods to your customers, in and around LaGrange. State the precise amount of reduction on each article in which you deal.

Ans. I could sell goods about 50c. per hundred pounds less, owing both to the reduction in the rates and the increase in my sales.

Cross-Intr. No. 5. If you say that reduction of the rates to LaGrange will increase the tonnage of traffic to that place, what would be its effect upon the tonnage of those places that have heretofore sold goods in competition with LaGrange?

Ans. I suppose that it would slightly decrease their tonnage.

320 Cross-Intr. No. 6. If you say that low or preferential rates have the effect to increase the population of a particular locality and to induce investment of capital there, explain how the population of LaGrange will be increased, if it is given the same, but no lower rates than other local stations between Atlanta and West Point?

Ans. It will increase her business by enabling her to sell goods cheaper and that will necessarily increase her population and induce the investment of capital there. H. H. CHILDS.

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321 DEPOSITION OF T. J. HARWELL.

In the Circuit Court of the United States for the Southern District of Alabama.

The Interstate Commerce Commission
vs. In Equity, No. 207.
The Louisville & Nashville R. R. Co., The Western Railway of Alabama and the Atlanta & West Point R. R. Co.

Direct Interrogatories and Answers.

Interrogatories filed in the above entitled cause on behalf of the complainant therein to T. J. Harwell, of LaGrange, Ga.

The witness, T. J. HARWELL, being duly sworn to speak the truth, the whole truth, and nothing but the truth, doth depose as follows:

Inter. No. 1. What is your name, residence and in what occupation or business are you engaged?

Ans. T. J. Harwell, LaGrange, Ga., merchant.

Intr. No. 2. If you say that you reside at LaGrange, Ga., state how long you have so resided and how long you have been engaged in business there.

Ans. I have resided here about thirty-six years and have been engaged in business here about twenty-two years.

Intr. No. 3. State whether merchants of Atlanta, Ga., and Opelika, Ala., sell goods and do business at LaGrange and in territory around LaGrange?

Ans. They do.

Intr. No. 4. What articles of traffic or merchandise constitute the bulk of the traffic shipped from New Orleans to LaGrange?

Ans. Sugar, molasses and rice.

Intr. No. 5. State whether LaGrange merchants in selling in territory in and around LaGrange, sugar, molasses and rice, and also other articles of merchandise shipped from New Orleans to LaGrange, come in competition with Atlanta and Opelika merchants and whether or not Atlanta and Opelika merchants have the advantage in such competition.

Ans. Yes, we come in competition with them and the advantage is all on their side.

322 Inter. No. 6. If in answer to the preceding interrogatories you state that LaGrange merchants are at a disadvantage in such competition, state from what that disadvantage results.

Ans. From discriminating rates in favor of Atlanta and Opelika.

Intr. No. 7. What are the carload rates from New Orleans to LaGrange on sugar, molasses and rice? What are the less than carload rates from New Orleans to LaGrange on those articles?

Ans. I do not know the carload rates on those articles. The less than carload rates are as follows per hundred pounds: sugar, 38c.; molasses, 37c., and rice, 34 1-2c.

Intr. No. 8. What are the carload rates from New Orleans to Hogansville, Newnan, Palmetto, Fairburn and Atlanta on sugar, molasses and rice? What are the less than carload rates from New Orleans to those points on sugar, molasses and rice?

Ans. I do not know.

Inter. No. 9. What are the carload and less than carload rates from New Orleans to Opelika on sugar, molasses and rice? What are the carload and less than carload rates on first class goods from New Orleans to Opelika?

Ans. I do not know the rates on sugar, molasses and rice, but the rates on first-class goods from New Orleans to Opelika are less than carload $1.03 per hundred pounds.

Inter. No. 10. What are the rates from Opelika to LaGrange on sugar, molasses and rice and first class goods?

Ans. The rates from Opelika to LaGrange on first class goods is 32c. per hundred pounds, on sugar, 14c., and molasses, 9c.

Intr. No. 11. If in your answers to preceding interrogatories, you have stated that LaGrange is placed at a disadvantage in competition with Atlanta and Opelika merchants, in territory in and around LaGrange, and that this disadvantage results from discriminations in rates, give specific examples of such discriminations and state the extent of the injury to LaGrange, if any, as a city, mercantile center or jobbing point?

Ans. An Opelika merchant can deliver goods in
323 LaGrange at a rate of $1.35 per hundred pounds and an Atlanta merchant can do the same thing for $1.43 per hundred pounds, while LaGrange pays $1.43 on New Orleans products. This enables the Opelika merchant to undersell the LaGrange merchants 8c. per hundred pounds on New Orleans products and an Atlanta to sell at the same rate at which we do at our own town and to undersell us at every town between LaGrange and Atlanta, in proportion as the distance grows less. Of course this hurts LaGrange in every respect.

Inter. No. 12. State whether or not Atlanta merchants can sell goods in Hogansville, Newnan, Palmetto and Fairburn, and also whether or not LaGrange merchants can sell goods at either of those places in competition with Atlanta merchants. If LaGrange merchants cannot compete with Atlanta merchants at either of those localities, explain why this is so.

Ans. Atlanta merchants do sell goods at all of those points and LaGrange merchants cannot compete with them on account of the higher rates to LaGrange.

Inter. No. 13. State whether the traffic from New Orleans to LaGrange is shipped under a through bill of lading, naming an aggregate through rate.

Ans. It is.

Intr. No. 14. Are goods ever shipped from New Orleans to LaGrange in carloads? If, so, state whether or not they are in such case brought through to LaGrange in the same cars in which they are originally loaded at New Orleans?

Ans. I think not.

Intr. No. 15. If you say that goods are seldom shipped in carloads, explain why this is so.

Ans. Because LaGrange's trade is so crippled by the discrimination in rates against her that she cannot handle goods in carloads.

Intr. No. 16. On shipments of goods from New Orleans to Hogansville, Newnan, Palmetto and Fairburn, are the terminal expenses at those points greater or less per hundred pounds than at LaGrange, or the same?

Ans. About the same.

324 Intr. No. 17. How many employes has the railroad company at Lagrange engaged in handling all the

freight from all localities and directions, at that point and what is the pay per month of such employes?

Ans. The railroad company has about seven employes and their average pay is about forty-five or fifty dollars a month.

Intr. No. 18. State, if you can, the total tonnage of traffic per month or per annum at LaGrange, and what the pay of the employes engaged in handling that traffic amounts to per hundred pounds.

Ans. I do not know.

Intr. No. 19. State the population and mercantile and manufacturing enterprises of Hogansville, LaGrange, Opelika, Newnan, Palmetto and Fairburn.

Ans. LaGrange has a population of five thousand, forty stores, two cotton mills, two female colleges, foundry, planing and grist mills, carriage factory, creamery, water works and electric lights. Opelika is of the same size as LaGrange and has about the same number of mercantile and manufacturing enterprises. Newnan is also about the same size as LaGrange. Hogansville has a population of about seven or eight hundred and about twenty stores. Palmetto has about seven hundred population and about fifteen stores and Fairburn has about nine hundred population and about fifteen stores.

Intr. No. 20. What other railways if any, reach LaGrange, besides the Atlanta & West Point? What other railways, if any, reach Hogansville, Newnan, Palmetto and Fairburn?

Ans. The Macon & Birmingham reaches LaGrange and the Central reaches Newnan. No others reach Hogansville, Palmetto and Fairburn.

Intr. No. 21. Do transportation rates enter into and affect the prices at which yourself and other LaGrange merchants can sell goods to consumers in and around LaGrange?

Ans. Yes, they do.

Intr. No. 22. How do prices of goods affect their sale or consumption? Are more goods sold when they are cheap or when they are high? What is your opinion and experience in reference to this matter?

325 Ans. Low prices increase and high prices decrease the sale and consumption.

Intr. No. 23. How will a reduction of the rates to LaGrange so as to make them not higher than rates to longer distanced competitors, affect the tonnage of traffic to LaGrange? Will it increase or diminish that tonnage? Give your reason for whatever opinion you may express on this point.

Ans. It will increase the tonnage of traffic by increasing our trade and causing us to buy more goods.

Intr. No. 24. What effect, if any, do relatively low or pref-

erential rates to a locality have in increasing the population of such locality and inducing the investment of capital there and in promoting the prosperity of such locality in other respects?

Ans. It has all of those effects.

Intr. No. 25. What effect, if any, do relatively high rates to a locality or rates which discriminate against a locality, have on its prosperity and progress in the respects named in the preceding interrogatory?

Ans. It has just the opposite effect.

Intr. No. 26. Do you know, or can you set forth any other matter, or thing, which may be of benefit to the parties at issue in this cause, or either of them, or that may be material to the subject of this your examination, or the matters in question in this cause? If yea, set forth the same fully and at large in your answer.

Ans. As long as the railroads continue to discriminate against LaGrange in freight rates it will badly handicap her in her retail trade and almost altogether prevent her from doing any wholesale business at all. Even people in our own town sometimes go up to Atlanta to buy their own goods, for the difference in rates in their favor gives them the advantage in the retail trade and allows them to undersell us on a single article.

326 Cross Interrogatories and Answers.

Cross-Intr. No. 1. If you state that merchants of Opelika or Atlanta sell goods at LaGrange or in territory around LaGrange, please specify to which of the lettered or numbered classes used in the Southern States Freight Association Classification, the goods to which you refer belong.

Ans. I am not familiar with that classification.

Cross-Intr. No. 2. What are the carload and less than carload rates on sugar, molasses and rice from New Orleans to Opelika, Hogansville, Newnan, Palmetto, Fairburn and Atlanta, respectively?

Ans. I do not know.

Cross-Intr. No. 3. State the population and mercantile and manufacturing enterprises of Atlanta.

Ans. Atlanta has a population of ninety thousand and the largest manufacturing and mercantile enterprises of any city of her size in the United States.

Cross-Intr. No. 4. If you state that transportation rates or charges enter into and effect the prices at which yourself and other LaGrange merchants can sell goods to consumers in and around LaGrange, state how much per hundred pounds you would reduce the price at which you sell goods to your cus-

tomers, in and around LaGrange. State the precise amount of reduction on each article in which you deal.

Ans. I could sell first-class goods 40c per hundred pounds less and other goods in the same proportion.

Cross-Intr. No. 5. If you say that reduction of the rates to LaGrange will increase the tonnage of traffic to that place, what would be its effect upon the tonnage of those places that have heretofore sold goods in competition with LaGrange?

Ans. It would have very little effect upon the tonnage to those places, although it might decrease it some.

Cross-Intr. No. 6. If you say that low or preferential rates to a locality have the effect to increase the population of a particular locality and to induce the investment of capital there, explain how the population or capital of LaGrange will
327 be increased, if it is given the same but no lower rates than other local stations between Atlanta and West Point.

Ans. It will enable her to compete with rival towns and to sell the trade in her own territory, which rightfully belongs to her.

T. J. HARWELL.

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328 DEPOSITION OF J. E. DUNSON.

In the Circuit Court of the United States for the Southern District of Alabama.

The Interstate Commerce Commission
vs. In Equity No. 207.
The Louisville & Nashville R. R. Co., The Western Railway of Alabama and The Atlanta & West Point R. R. Co.

Direct Interrogatories and Answers.

Interrogatories filed in the above entitled cause on behalf of the complainant therein to J. E. Dunson, of LaGrange, Ga.

The witness, J. E. DUNSON, being duly sworn, to speak the truth the whole truth and nothing but the truth, doth depose as follows:

Intr. No. 1. What is your name and residence and in what occupation or business are you engaged?

Ans. J. E. Dunson, merchant, LaGrange, Ga.

Intr. No. 2. If you say that you reside at LaGrange, Ga., state how long you have so resided and how long you have been engaged in business there?

Ans. I have resided in LaGrange eighteen years and have been engaged in business there for twelve years.

Intr. No. 3. State whether merchants of Opelika, Ala., and Atlanta, Ga., sell goods and do business at LaGrange and in territory around LaGrange.

Ans. Yes, they do.

Intr. No. 4. What articles of traffic or merchandise constitute the bulk of the traffic shipped from New Orleans, La., to LaGrange?

Ans. Sugar and molasses constitute the bulk of the traffic in my line, but all classes are shipped.

Intr. No. 5. State whether LaGrange merchants in selling in territory in and around LaGrange, sugar, molasses and rice, and also other articles of merchandise shipped from New Orleans, come in competition with Atlanta and Opelika merchants, and whether or not Atlanta and Opelika merchants have an advantage in such conpetition.

329 Ans. Yes, and they have the advantage of us.

Intr. No. 6. If in answer to the preceding interrogatory, you state that LaGrange merchants are at a disadvantage in such competition, state from what that disadvantage results.

Ans. From discriminating rates against LaGrange.

Intr. No. 7. What are the carload rates from New Orleans to LaGrange on sugar, molasses and rice? What are the less than carload rates from New Orleans to LaGrange on those articles?

Ans. The less than carload rates are as follows per hundred pounds: Sugar, 38c; rice, 34½c, and molasses, 37c. We get no reduction on these rates when we order in carloads.

Intr. No. 8. What are the carload rates from New Orleans to Hogansville, Newnan, Palmetto, Fairburn and Atlanta on sugar, molasses and rice?

Ans. I do not know the exact rates on those articles except to LaGrange.

Intr. No. 9. What are the carload and less than carload rates on sugar, molasses and rice from New Orleans to Opelika? What are the carload and less than carload rates on first-class goods from New Orleans to Opelika?

Ans. I do not know the rates on sugar, molasses and rice. The less than carload rates on first-class goods from New Orleans to Opelika is $1.03 per hundred pounds.

Intr. No. 10. What are the rates from Opelika to LaGrange on sugar, molasses and rice and first-class goods?

Ans. The rates are as follows per hundred pounds: On first-class goods, 32c; on sugar, 14c; on molasses, 9c. I never ship any rice from that point.

Intr. No. 11. If in your answers to preceding interrogatories you have stated that LaGrange is placed at a disadvantage in competition with Atlanta and Opelika merchants, in territory in and around LaGrange, and that this disadvantage results from discriminations in rates, give specific examples of such discriminations. State the extent of the injury to LaGrange, if any, as a city, mercantile center or jobbing point.

330 Ans. The extent of the injury to LaGrange as a mercantile center and jobbing point is very great. There are a good many small country stores in territory around LaGrange, and the wholesale trade arising from them is considerable and desirable. Now, in order to hold any wholesale business we must be able to offer goods as cheap as any of our competitors, for if they can undersell us only a fraction of a cent on each article, it would enable them to wrest the trade from us, for people are going to buy where they can buy cheapest, no matter where that is. To illustrate, an Opelika merchant can ship New Orleans products to LaGrange for $1.35 per hundred pounds, while a LaGrange merchant has to pay $1.43 per hundred pounds for the same thing; of course, this gives a tremendous advantage to the Opelika merchants, not only on New Orleans products, but on all other classes of goods, and Atlanta merchants have the same advantage of us. We will never be able to build up any wholesale trade as long as this state of affairs continues to exist.

Intr. No. 12. State whether or not Atlanta merchants can sell goods in Hogansville, Newnan, Palmetto and Fairburn, and also whether or not LaGrange merchants can sell goods at either of those places in competition with Atlanta merchants. If LaGrange merchants cannot compete with Atlanta merchants at those points, explain why this is so.

Ans. Atlanta merchants sell goods at all of those points and LaGrange merchants cannot compete with them because the Atlanta merchants get a rate of 20c to 50c per hundred pounds lower than the LaGrange merchant can to the same locality.

Intr. No. 13. State whether traffic from New Orleans to LaGrange is shipped under a through bill of lading, naming an aggregate through rate.

Ans. It is.

Intr. No. 14. Are goods ever shipped from New Orleans to LaGrange in carloads? If so, state whether or not they are brought through in the same cars in which they are originally loaded at New Orleans.

Ans. They are sometimes shipped in carloads from New Orleans and always in the same cars in which they were originally loaded.

331 Intr. No. 15. If you say that goods are seldom shipped in carloads from New Orleans to LaGrange, state why this is so.

Ans. Because we are discriminated against so much that we can only handle goods locally and can do no wholesale business at all.

Intr. No. 16. On shipments of goods from New Orleans to Hogansville, Newnan, Palmetto and Fairburn are the terminal expenses at those points greater or less per hundred pounds, than at LaGrange, or the same?

Ans. About the same.

Intr. No. 17. How many employes has the railroad company at LaGrange engaged in handling all the freight from all localities and directions, and what is the pay per month of such employes?

Ans. The Atlanta & West Point has seven employes, and their salaries all combined would not be over $300.

Intr. No. 18. State if you can the total tonnage of traffic per month or per annum at LaGrange, and what the pay of the employes engaged in handling that traffic amounts to per hundred pounds.

Ans. I do not know.

Intr. No. 19. State the population of and mercantile and manufacturing enterprises of LaGrange, Opelika, Hogansville, Newnan, Palmetto and Fairburn.

Ans. LaGrange has a population of about five thousand, forty stores, two railroads, water works and electric lights, grist mills and planing mills, foundry, creamery, two cotton mills and carriage factory. Newnan has a population of about forty-five hundred and about the same number of mercantile and manufacturing enterprises as LaGrange. Opelika has a population of about five thousand and also the same as LaGrange in other respects. Hogansville has a population of about seven hundred and about twenty stores. Palmetto has a population of about seven hundred and about fifteen to twenty stores. Fairburn has about nine hundred population and about twenty stores.

Intr. No. 20. What other railways, if any, reach LaGrange besides the Atlanta & West Point? What other railways, if any, reach Hogansville, Newnan, Palmetto and Fairburn?

Ans. The Macon & Birmingham also reaches La-
332 Grange and the Central reaches Newnan. No others reach the other points.

Intr. No. 21. Do transportation rates enter into and affect the prices at which yourself and other LaGrange merchants can sell goods to consumers in and around LaGrange?

Ans. Yes, they do.

Intr. No. 22. How do prices of goods affect their sale or consumption? Are more goods sold to consumers when they are cheap or when they are high? What is your opinion and experience in reference to this matter?

Ans. Low prices increase the sale and consumption and high prices decrease the sale and consumption.

Intr. No. 23. How will a reduction of the rates to LaGrange so as to make them not higher than rates to longer distanced competitors, effect the tonnage of traffic at LaGrange? Will it increase or diminish that tonnage? Give your reasons for whatever opinion you may express on this point.

Ans. It will increase the tonnage of traffic to LaGrange, for the reason that it will enable us to sell a class of trade that we do not sell now and cause us to buy more goods than we do now. We would also sell more goods because we could sell them cheaper.

Intr. No. 24. What effect, if any, do relatively low or preferential rates to a locality have in increasing the population of such locality and inducing the investment of capital there, and in promoting the prosperity of such locality in other respects?

Ans. It increases prosperity and the population and induces the investment of capital.

Intr. No. 25. What effect, if any, do relatively high rates to a locality, or rates which discriminate against a locality have on its prosperity and progress in the respects named in the preceding interrogatory?

Ans. It decreases the population, offers no inducement to capital, retards the growth of a locality in every re-
333 spect.

Intr. No. 26. Do you know or can you set forth any other matter, or thing, which may be of benefit to the parties at issue in this cause, or either of them, or that may be material to the subject of this your examination or the matters in question in this cause? If yea, set forth the same fully and at large in your answer.

Ans. I know of nothing further.

334 Cross Interrogatories and Answers.

Cross-Intr. No. 1. If you state that merchants of Opelika or Atlanta sell goods at LaGrange, or in territory around LaGrange, please specify to which of the lettered or numbered classes, used in the Southern States Freight Association Classification, the goods to which you refer belong, and state what kind of goods they are.

Ans. They sell goods of all the lettered or numbered classes, but more of some than others.

Cross-Intr. No. 2. What are the carload and less than carload rates on sugar, molasses and rice from New Orleans to Opelika, Hogansville, Newnan, Palmetto, Fairburn and Atlanta, respectively?

Ans. I do not know.

Cross-Intr. No. 3. State the population and mercantile and manufacturing enterprises of Atlanta.

Ans. Atlanta has a population of about eighty to ninety thousand people, large and prosperous mercantile establishments, but do not think that she has so many manufacturing enterprises for a city of that size.

Cross-Intr. No. 4. If you state that transportation rates or charges enter into and affect the prices at which yourself and other LaGrange merchants can sell goods to consumers in and around LaGrange, state how much per hundred pounds you would reduce the price at which you sell goods to your customers in and around LaGrange? State the precise amount of reduction on each article in which you deal.

Ans. It would depend altogether on the amount of reduction in the freight rates.

Cross-Intr. No. 5. If you say that reduction of the rates to LaGrange will increase the tonnage of traffic to that place, what would be its effect upon the tonnage of those places that have heretofore sold goods in competition with LaGrange?

Ans. It might slightly decrease the tonnage to those places, but the principal factor in increasing the tonnage to LaGrange would be in the cheaper prices, and not at the expense of other towns.

335 Cross-Intr. No. 6. If you say that low or preferential rates to a locality have the effect to increase the population of such locality, and to induce the investment of capital there, explain how the population or capital of LaGrange will be increased if she is given the same, but no lower rates than other local stations between West Point and Atlanta.

Ans. LaGrange having the capital to handle the new business that would naturally arise and the enterprise to push the business, it would follow that doing more business, it would take more men to sell and handle the goods. Being able to sell goods cheaper, would make LaGrange more desirable as a residence to that class of people, who are, to a certain extent, able on account of their connections to change their residence at will. LaGrange having capital already invested in manufacturing enterprises, she could push her interests in that line; in fact, the increase of work in all lines would call for more men to do the work and thereby increase her population. J. E. DUNSON.

336 DEPOSITION OF J. H. EDMONDSON.

In the Circuit Court of the United States for the Southern District of Alabama.

The Interstate Commerce Commission
vs. In Equity No. 207.
Louisville & Nashville Railroad Co. and Western Railway of Alabama and Atlanta & West Point Railroad Co.

Direct Interrogatories and Answers.

The witness, J. H. EDMONDSON, being duly sworn to speak the truth, the whole truth, and nothing but the truth, deposes as follows:

Inter. No. 1. What is your name and residence and in what occupation or business are you engaged?

Ans. J. H. Edmondson, LaGrange, Ga., merchant.

Intr. No. 2. If you say that you reside at LaGrange, Ga., state how long you have so resided and how long you have been engaged in business there.

Ans. I have resided in LaGrange about fifteen years and have been engaged in business there about ten years.

Intr. No. 3. State whether merchants of Opelika, Ala., and Atlanta, Ga., sell goods and do business at LaGrange and in territory around LaGrange.

Ans. They do.

Intr. No. 4. What articles of traffic or merchandise constitute the bulk of the traffic from New Orleans to LaGrange?

Ans. Sugar, molasses and rice.

Intr. No. 5. State whether LaGrange merchants in selling in territory in and around LaGrange, sugar, molasses and rice, and also other articles of merchandise shipped from New Orleans, come in competition with Atlanta and Opelika merchants and whether or not Atlanta and Opelika merchants have an advantage in such competition?

Ans. Yes; they have a very marked advantage.

Intr. No. 6. If, in answer to the preceding interrogatories, you state that LaGrange merchants are at a disadvantage in such competition, state from what that disadvantage re-
337 sults.

Ans. From discriminating rates against LaGrange.

Intr. No. 7. What are the carload rates from New Orleans to LaGrange on sugar, molasses and rice? What are the less than carload rates from New Orleans to LaGrange on those articles?

Ans. The less than carload rates are as follows per hundred pounds: sugar, 38c.; molasses, 37c., and rice, 34/2c. We do not get any cheaper rate by buying in carloads.

Intr. No. 8. What are the carload rates from New Orleans to Hogansville, Newnan, Palmetto, Fairburn and Atlanta on sugar, molasses and rice? What are the less than carload rates from New Orleans to those points on sugar, molasses and rice?

Ans. I do not know.

Inter. No. 9. What are the carload and less than carload rates on sugar, molasses and rice from New Orleans to Opelika? What are the carload and less than carload rates on first class goods from New Orleans to Opelika?

Ans. I do not know the molasses and rice rate as I only handle dry goods. The rate on first-class goods from New Orleans to Opelika is, less than carload, $1.03 per hundred pounds.

Inter. No. 10. What are the rates from Opelika to LaGrange on sugar, molasses and rice and first class goods?

Ans. I do not know the rates on sugar, molasses and rice. The rates on first class goods is 32c. per hundred pounds.

Intr. No. 11. If in your answers to preceding interrogatories, you have stated that LaGrange is placed at a disadvantage in competition with Atlanta and Opelika merchants, in territory in and around LaGrange, and that this disadvantage results from discriminations in rates, give specific examples of such discriminations. State the extent of the injury to LaGrange, if any, as a city, mercantile center or jobbing point?

Ans. I know that the rate to LaGrange on first class goods is $1.43 per hundred pounds, on goods shipped from New Orleans, while Opelika merchants can deliver the same goods in LaGrange at a rate of only $1.35 per hundred pounds. The same thing is true of Atlanta merchants on goods
338 shipped from all points. While I am not familiar with the rates enough to give the exact figures, it is a matter of common knowledge that LaGrange is discriminated against. Besides, I know it from my own experience, wholesale houses charging me a higher price on goods delivered because of the discriminations against LaGrange.

Inter. No. 12. State whether or not Atlanta merchants can sell goods in Hogansville, Newnan, Palmetto and Fairburn, and also whether or not LaGrange merchants can sell goods at either of those places in competition with Atlanta merchants. If LaGrange merchants cannot compete with Atlanta merchants at either of those localities, explain why this is so.

Ans. Atlanta merchants sell goods at all of those points

and LaGrange merchants cannot compete with them because of the more favorable rates which they receive.

Inter. No. 13. State whether the traffic from New Orleans to LaGrange is shipped under a through bill of lading, naming an aggregate through rate.

Ans. Yes.

Intr. No. 14. Are goods ever shipped from New Orleans to LaGrange in carloads? If, so, state whether or not they are in such case brought through in the same cars in which they were originally loaded in New Orleans.

Ans. I think not.

Intr. No. 15. If you say that goods are seldom shipped in carloads from New Orleans to LaGrange, state why this is so?

Ans. Because of the discrimination against LaGrange in freight rates.

Intr. No. 16. On shipments of goods from New Orleans to Hogansville, Newnan, Palmetto and Fairburn, are the terminal expenses at those points greater or less per hundred pounds than at LaGrange, or the same?

Ans. They are practically the same.

339 Intr. No. 17. How many employes has the railroad company at LaGrange, engaged in handling all the freight from all localities and all directions and what is the pay per month of such employes?

Ans. I think that the Atlanta & West Point has seven employes at an aggregate salary of about $300.

Intr. No. 18. State, if you can, the total tonnage of traffic per month or per annum at LaGrange, and what the pay of the employes engaged in handling that traffic amounts to per hundred pounds.

Ans. I do not know.

Intr. No. 19. State the population of and the mercantile and manufacturing enterprises of LaGrange, Opelika, Hogansville, Newnan, Palmetto and Fairburn.

Ans. LaGrange has a population of five thousand, about forty or forty-five stores, two cotton mills, grist mills, planing mill, oil mill, creamery, foundry and carriage factory. I cannot specify the enterprises of Opelika and Newnan, but they are of about the same size and number as those of LaGrange. Hogansville, Palmetto and Fairburn have each about eight hundred population and from fifteen to twenty stores.

Intr. No. 20. What other railways, if any, reach LaGrange, besides the Atlanta & West Point? What other railways, if any, reach Hogansville, Newnan, Palmetto and Fairburn?

Ans. The Central also reaches Newnan and the Macon &

Birmingham reaches LaGrange. The Atlanta & West Point is the only one that reaches the other places.

Intr. No. 21. Do transportation rates enter into and affect the prices at which yourself and other LaGrange merchants can sell goods to consumers in and around LaGrange?

Ans. They do.

Intr. No. 22. How do prices of goods affect their sale or consumption? Are more goods sold to consumers when they are cheap or when they are high? What is your opinion and experience in reference to this matter?

Ans. Low prices increase the sale and consumption and high prices decrease the sale and consumption.

340 Intr. No. 23. How will a reduction of the rates to LaGrange, so as to make them not higher than rates to longer distance competitors, affect the tonnage of traffic to LaGrange? Will it increase or diminish that tonnage? Give your reason for whatever opinion you may express on this point?

Ans. It will increase the tonnage by enabling us to sell more goods and sell them cheaper.

Intr. No. 24. What effect, if any, do relatively low rates to a community have in increasing the population of such locality and inducing the investment of capital there, and in promoting the prosperity of such locality in other respects?

Ans. It has all of the above named effects.

Intr. No. 25. What effect, if any, do relatively high rates to a locality, or rates which discriminate against a locality, have on its prosperity and progress in the respects named in the preceding interrogatory?

Ans. It has none of those effects.

Intr. No. 26. Do you know or can you set forth any other matter or thing, which may be of benefit to the parties at issue in this cause, or either of them, or that may be material to the subject of this, your examination, or the matters in question in this cause? If yea, set forth the same fully and at large in your answer.

Ans. I know of nothing further.

341 Cross Interrogatories and Answers.

Cross-Intr. No. 1. If you state that merchants of Opelika or Atlanta sell goods at LaGrange, or in territory around LaGrange, please specify to which of the lettered or numbered classes, used in the Southern States Freight Association Classification the goods to which you refer belong, and state what kind of goods they are.

Ans. I am not familiar with that classification.

Intr. No. 2. What are the carload and less than carload rates on sugar, molasses and rice from New Orleans to Opelika, Hogansville, Newnan, Palmetto, Fairburn and Atlanta, respectively?

Ans. I do not know.

Intr. No. 3. State the population and mercantile and manufacturing enterprises of Atlanta.

Ans. Atlanta claims a population of about one hundred thousand, and has large manufacturing and mercantile enterprises.

Cross-Intr. No. 4. If you state that transportation rates or charges enter into and affect the prices at which yourself and other LaGrange merchants can sell goods to consumers in and around LaGrange, state how much per hundred pounds you would reduce the price at which you sell goods to your customers in and around LaGrange? State the precise amount of reduction on each article in which you deal.

Ans. I cannot state the precise amount.

Intr. No. 5. If you say that reduction of the rates to LaGrange will increase the tonnage of traffic to that place, what would be its effect upon the tonnage to those places that have heretofore sold goods in competition with LaGrange?

Ans. It would lessen the tonnage to some extent.

Intr. No. 6. If you say that low or preferential rates have the effect to increase the population of a particular locality and to induce the investment of capital there, explain how the population or capital of LaGrange will be increased, if it is given the same, but no lower rates than other local stations between West Point and Atlanta.

342 Ans. By giving her a fair showing with her competitors and enabling her to increase her business and to enlarge her manufacturing enterprises. In other words, it would help her to the extent to where she could help herself.

J. H. EDMONDSON.

343 DEPOSITION OF W. V. GRAY.

In the Circuit Court of the United States for the Southern District of Alabama.

The Interstate Commerce Commission
vs. In Equity. No. 207.
Louisville & Nashville Railroad Co., Western Railroad of Alabama and Atlanta & West Point Railroad Co.

Direct Interrogatories and Answers.

Interrogatories filed in the above entitled cause on behalf of the complainant therein to W. V. Gray, of LaGrange, Ga.

The witness, W. V. GRAY, being duly sworn to speak the truth, the whole truth and nothing but the truth, deposes as follows:

Intr. No. 1. What is your name and residence and in what occupation or business are you engaged?

Ans. W. V. Gray, LaGrange, Ga., merchant.

Intr. No. 2. If you say that you reside at LaGrange, Ga., state how long you have so resided and how long you have been engaged in business there.

Ans. I have resided here twenty-four years and have been engaged in business all of that time.

Intr. No. 3. State whether merchants of Opelika, Ala., and Atlanta, Ga., sell goods at LaGrange and in territory around LaGrange.

Ans. Yes.

Intr. No. 4. What articles of traffic constitute the bulk of the traffic shipped from New Orleans to LaGrange?

Ans. Sugar, molasses and rice.

Intr. No. 5. State whether LaGrange merchants, in selling in territory in and around LaGrange, sugar, molasses and rice, and also other articles of merchandise, shipped from New Orleans, come in competition with Atlanta and Opelika merchants and whether or not Atlanta and Opelika merchants have an advantage in such competition.

Ans. Yes, we do come in competition with Atlanta and Opelika merchants, and they have all the advantage
344 of us.

Intr. No. 6. If in answer to the preceding interrogatories you say that LaGrange merchants are at a disadvantage in such competition, state from what that disadvantage results.

Ans. The rates favor Atlanta and Opelika against LaGrange.

Intr. No. 7. What are the carload rates from New Orleans to LaGrange on sugar, molasses and rice? What are the less than carload rates from New Orleans to LaGrange on those articles?

Ans. The less than carload rate is as follows per hundred pounds: Sugar, 38c; molasses, 37c, and rice, 34½c. We have no carload rate.

Intr. No. 8. What are the carload rates from New Orleans to Hogansville, Newnan, Palmetto and Fairburn and Atlanta on sugar, molasses and rice? What are the less than carload rates from New Orleans to those points on sugar, molasses and rice?

Ans. I am not familiar with the rates on those articles, as I only handle dry goods.

Intr. No. 9. What are the carload and less than carload rates on sugar, molasses and rice from New Orleans to Opelika? What are the carload and less than carload rates on first-class goods from New Orleans to Opelika?

Ans. I do not know the rates on sugar, molasses and rice, but the rate on first-class goods is 1.03 per hundred pounds.

Intr. No. 10. What are the rates from Opelika to LaGrange on sugar, molasses and rice and first-class goods?

Ans. The regular schedule rate would be 48c, but they are given a special rate of 36c on first-class goods. I do not know the rates on sugar, molasses and rice.

Intr. No. 11. If in your answers to preceding interrogatories you have stated that LaGrange is placed at a disadvantage in competition with Atlanta and Opelika merchants, in territory in and around LaGrange, and that this disadvantage results from discriminations in rates, give specific examples of such discriminations. State the extent of the injury to LaGrange of any, as a city, mercantile center or jobbing point.

345 Ans. New Orleans and Atlanta merchants get a rate on first-class goods shipped from New Orleans to those points of $1.03 per hundred pounds, while LaGrange merchants have to pay a rate of $1.43 per hundred pounds on the same goods. Opelika merchants can then ship those same goods on to LaGrange for 32c, enabling her to get New Orleans products to LaGrange for 8c less per hundred pounds than a LaGrange merchant can. On the same principle, an Atlanta merchant can reship New Orleans products back to LaGrange at the same rate which a LaGrange merchant has to pay. Of course, this is very damaging to LaGrange.

Intr. No. 12. State whether or not Atlanta merchants can

sell goods in Hogansville, Newnan, Palmetto and Fairburn, and whether or not LaGrange merchants can sell goods at either of those places in competition with Atlanta merchants. If LaGrange merchants cannot compete with Atlanta merchants at either of those localities, explain why this is so.

Ans. Because an Atlanta merchant can undersell a LaGrange merchant at all of those points from 50c to 65c per hundred pounds, varying with the mileage from Atlanta.

Intr. No. 13. State whether traffic from New Orleans to LaGrange is shipped under a through bill of lading, naming an aggregate through rate.

Ans. Yes.

Intr. No. 14. Are goods ever shipped from New Orleans to LaGrange in carloads? If so, state whether or not they are in such case brought through to LaGrange in the same cars in which they are originally loaded at New Orleans.

Ans. Not often, but when it is the case, they are brought through to LaGrange in the same cars.

Intr. No. 15. If you say that goods are seldom shipped from New Orleans to LaGrange in carloads, explain why this is so.

Ans. On account of the discriminations in rates against LaGrange, which prevents her from buying goods in large quantities.

Intr. No. .. On shipments of goods from New Orleans to Hogansville, Newnan, Palmetto and Fairburn are the terminal expenses at those points greater or less per hundred pounds than at LaGrange, or the same?

346 Ans. There is practically no difference.

Intr. No. 17. How many employes has the railroad company at LaGrange engaged in handling all the freight from all localities and all directions, at that point, and what is the pay per month of such employes?

Ans. There are seven employes and their pay will amount in the aggregate to about three hundred dollars a month.

Intr. No. 18. State, if you can, the tonnage of traffic per month or per annum at LaGrange, and what the pay of the employes engaged in handling that traffic amounts to per hundred pounds.

Ans. I do not know.

Intr. No. 19. State the population and mercantile and manufacturing enterprises of LaGrange, Opelika, Hogansville, Newnan, Palmetto and Fairburn.

Ans. LaGrange has a population of five thousand, forty stores, two large female colleges, two railroads, electric lights, water works, two cotton mills, foundry, creamery and several other minor industries. Newnan and Opelika are about the

same as LaGrange in every respect. Hogansville, Palmetto and Fairburn average from eight hundred to a thousand population and from fifteen to twenty stores a piece.

Intr. No. 20. What other railways, if any, besides the Atlanta & West Point Railroad, reach LaGrange? What other railways, if any, reach Hogansville, Newnan, Palmetto and Fairburn?

Ans. The Macon & Birmingham also reaches LaGrange and the Central reaches Newnan.

Intr. No. 21. Do transportation rates or charges enter into and effect the prices at which yourself and other LaGrange merchants can sell goods to consumers in and around LaGrange?

Ans. They do.

Intr. No. 22. How do prices of goods affect their sale or consumption? Are more goods sold to consumers when they are cheap or when they are high? What is your opinion and experience in reference to this matter?

347 Ans. Prices have a very material effect upon the sale and consumption of goods. Low prices increase my sales and high prices diminish them.

Intr. No. 23. How will a reduction of the rates to LaGrange so as to make them not higher than rates to longer distanced competitors, affect the tonnage of traffic to LaGrange? Will it increase or diminish that tonnage? Give your reasons for whatever opinion you may express on this point.

Ans. It will increase the tonnage by increasing the volume of our business.

Intr. No. 24. What effect, if any, do relatively low or preferential rates to a community, have in increasing the population of such locality and inducing the investment of capital there, and in promoting the prosperity of such locality in other respects?

Ans. It has all of those effects.

Intr. No. 25. What effect, if any, do relatively high rates to a locality or rates which discriminate against a locality have on its prosperity and progress in the respects named in the preceding interrogatory?

Ans. It has just the opposite effect.

Intr. No. 26. Do you know or can you set forth any other matter, or thing, which may be of benefit to the parties at issue in this cause, or either of them, or that may be material to the subject of this your examination, or the matters in question in this cause? If yea, set forth the same fully and at large in your answer.

Ans. I know nothing further of benefit to either of the parties.

348 Cross Interrogatories and Answers.

Cross-Intr. No. 1. If you state that merchants of Opelika or Atlanta sell goods at LaGrange, or in territory around LaGrange, please specify to which of the lettered or numbered classes, used in the Southern States Freight Association Classification, the goods to which you refer belong, and state what kind of goods they are.

Ans. They sell goods of all the lettered or numbered classes of that classification.

Cross-Intr. No. 2. What are the carload and less than carload rates on sugar, molasses and rice from New Orleans to Opelika, Hogansville, Newnan, Palmetto, Fairburn and Atlanta, respectively?

Ans. I do not know.

Cross-Intr. No. 3. State the population of and the mercantile and manufacturing enterprises of Atlanta.

Ans. I could not enumerate all of the enterprises of Atlanta, but they are commensurate with those of a city of her energy and size.

Cross-Intr. No. 4. If you state that transportation rates or charges enter into and affect the prices at which yourself and other LaGrange merchants can sell goods to consumers in and around LaGrange, state how much per hundred pounds you would reduce the price at which you sell goods to your customers in and around LaGrange. State the precise amount of reduction on each article in which you deal.

Ans. It would depend altogether on the amount of reduction in rates in each particular article.

Cross-Intr. No. 5. If you say that reduction of the rates to LaGrange will increase the tonnage of traffic to that place, what would be [the] effect upon the tonnage of those places that have heretofore sold goods in competition with LaGrange?

Ans. It would temporarily decrease it, but in the long run I do not think that it would have much effect either way.

Cross-Intr. No. 6. If you say that low or preferential rates have the effect to increase the population of a particular locality, and to induce the investment of capital there, explain how the population or capital of LaGrange will be increased, if it is given the same, but no lower rates than other local
349 stations between West Point and Atlanta.

Ans. Because by given [giving] us the same rates which these other stations now have and enjoy, we would be placed on an equal footing with them and enable [enabled] to compete with them more successfully and thereby increase our business to such an extent that the increased population and capital would inevitably follow. W. V. GRAY.

350 DEPOSITION OF B. H. SEAY.

In the Circuit Court of the United States for the Southern District of Alabama.

The Interstate Commerce Commission
vs. In Equity. No. 207.
The Louisville & Nashville R. R. Co., The Western Railway of Alabama and the Atlanta & West Point R. R. Co.

Direct Interrogatories and Answers.

Interrogatories filed in the above entitled cause on behalf of the complainant therein to B. H. Seay, of LaGrange, Ga.

The witness, B. H. SEAY, being duly sworn to speak the truth, the whole truth and nothing but the truth, deposes as follows:

Intr. No. 1. What is your name and residence and in what occupation or business are you engaged?

Ans. B. H. Seay, LaGrange, Ga., merchant.

Intr. No. 2. If you say that you reside at LaGrange, Ga., state how long you have so resided and how long you have been engaged in business there.

Ans. I have resided here eighteen years and have been engaged in business here for twelve years.

Intr. No. 3. State whether merchants of Opelika, Ala., and Atlanta, Ga., sell goods and do business at LaGrange and in territory around LaGrange.

Ans. Yes, they do.

Intr. No. 4. What articles of traffic or merchandise constitute the bulk of the traffic shipped to LaGrange from New Orleans, La.

Ans. Sugar, molasses and rice.

Intr. No. 5. State whether LaGrange merchants in selling in territory in and around LaGrange, sugar, molasses and rice, and also other articles of merchandise shipped from New Orleans, come in competition with Atlanta and Opelika merchants, and whether or not Atlanta and Opelika merchants have an advantage in such competition.

Ans. Yes, and they have the advantage of us.

351 Intr. No. 6. If in answer to the preceding interrogatory, you state that LaGrange merchants are at a disadvantage in such competition, state from what that disadvantage results.

Ans. From discriminations in freight rates against LaGrange.

Intr. No. 7. What are the carload rates from New Orleans to LaGrange on sugar, molasses and rice? What are the less than carload rates from New Orleans to LaGrange on those articles?

Ans. We cannot obtain from the agent here rates by the carload from New Orleans to LaGrange. The less than carload rates are as follows per hundred pounds: Sugar, 36c; molasses, 37c; rice, 34½c.

Intr. No. 8. What are the carload rates from New Orleans to Hogansville, Newnan, Palmetto, Fairburn and Atlanta on sugar, molasses and rice? What are the less than carload rates from New Orleans to those points on sugar, molasses and rice?

Ans. I cannot obtain carload rates from N. O. to Hogansville, Newnan, Palmetto, Fairburn and Atlanta, and I am unable to obtain the less than carload rates on molasses and rice. The less than carload rates on sugar are as follows per hundred pounds: To Hogansville, 36c; Fairburn, 32c; Palmetto, 33c; Newnan, 34c; Atlanta, 21c.

Intr. No. 9. What are the carload and less than carload rates on sugar, molasses and rice from New Orleans to Opelika? What are the carload and less than carload rates on first-class goods from New Orleans to Opelika?

Ans. The carload rate on sugar from New Orleans to Opelika is 16c, less than carload is 21c. I do not know the rates on molasses and rice from New Orleans to Opelika, but the less than carload rate on first-class goods is $1.03 per hundred pounds.

Intr. No. 10. What are the rates from Opelika to LaGrange on sugar, molasses and rice and first class goods?

Ans. The rates from Opelika to LaGrange are as follows per hundred pounds: 1st-class, 32c; 2nd-class, 29c; 3d-class, 26c; 4th-class, 23c; 5th-class, 18c; 6th-class, 14c; sugar, 14c. I do not know the molasses and rice rate.

352 Intr. No. 11. If in your answer to preceding interrogatories, you have stated that LaGrange is placed at a disadvantage in competition with Opelika and Atlanta merchants in territory in and around LaGrange, and that this disadvantage results from discriminations in rates, give specific examples of such discrimination and state the extent of the injury to LaGrange, if any, as a city, mercantile center or jobbing point.

Ans. A merchant in Opelika can ship first-class goods from New Orleans to Opelika for $1.03 per hundred pounds and then reship that to LaGrange for 32c per hundred pounds, making

their rate $1.35 per hundred pounds, as against a LaGrange merchant shipping through freight from New Orleans to LaGrange at the rate of $1.43 per hundred pounds, thus allowing an Opelika merchant to undersell the LaGrange merchant because of the discrimination in rates. This is very injurious to LaGrange in every respect.

Int. No. 12. State whether or not Atlanta merchants can sell goods in Hogansville, Newnan, Palmetto and Fairburn, and also whether or not LaGrange merchants can sell goods at either of those places in competition with Atlanta merchants. If LaGrange merchants cannot conmpete with Atlanta merchants at those localities, explain why this is so.

Ans. Atlanta merchants sell goods at all of those points and LaGrange merchants cannot compete with them because of Atlanta's lower rates. Taking first-class rates as a basis, the following illustration will show what we have to contend against: The rate from New Orleans to Atlanta is $1.03 and then back to Hogansville 36c, making Atlanta's rate to Hogansville $1.39 per hundred pounds. The rate from New Orleans to LaGrange is $1.43 and from LaGrange to Hogansville 20c, making the LaGrange rate to Hogansville $1.63 per hundred pounds, thus giving a favor of 24c per hundred pounds for a much longer haul.

Intr. No. 13. State whether traffic from New Orleans to LaGrange is shipped under a through bill of lading, naming an aggregate through rate.

Ans. It is.

Int. No. 14. Are goods ever shipped from New Orleans to LaGrange in carloads? If so, state whether or not they are in such case brought through to LaGrange in the same cars in which they are generally loaded at New Orleans.

353 Ans. Not often. Do not know whether they come in the same cars or not.

Intr. No. 15. If you say goods are seldom shipped in carloads from New Orleans to LaGrange, state why this is so.

Ans. Because Atlanta's and Opelika's rates being lower than LaGrange's, it forces LaGrange from the field in the competition for wholesale business.

Intr. No. 16. On shipments of goods from New Orleans to Hogansville, Newnan, Palmetto and Fairburn are the terminal expenses at those points greater or less per hundred pounds than at LaGrange or the same?

Ans. They are practically the same.

Intr. No. 17. How many employes has the railroad company at LaGrange engaged in handling all the freight from all localities and all directions at that point, and what is the pay per month of such employes?

Ans. I do not know.

Intr. No. 18. State, if you can, the total tonnage of traffic to LaGrange, per month or per annum, and what the pay of the employes engaged in handling that traffic amounts to per hundred pounds.

Ans. I do not know.

Intr. No. 19. State the population and mercantile and manufacturing enterprises of LaGrange, Hogansville, Opelika, Newnan, Palmetto and Fairburn.

Ans. LaGrange—population five thousand, thirty-five or forty substantial merchants, two cotton mills, iron foundry, oil mill and planing mill, grist mill, water works, electric lights, two railroads, and probably several other smaller industries. Opelika is very nearly the same as LaGrange, except that she has three railroads. Hogansville has a population of about eight hundred, one oil mill and ginnery and from fifteen to twenty stores. Newnan is of about the same size as LaGrange. Palmetto has a population of about seven hundred and fifty, one cotton mill and fifteen to twenty stores. Fairburn has a population of about nine hundred, one harness factory and about fifteen stores.

354 Intr. No. 20. What other railways, if any, besides the Atlanta & West Point Railroad, reach LaGrange? What other railways, if any, reach Hogansville, Newnan, Palmetto and Fairburn?

Ans. The Macon & Birmingham, which runs from LaGrange to Macon, also reaches LaGrange, and the Central also reaches Newnan. No others reach the other points.

Intr. No. 21. Do transportation rates or charges enter into and affect the prices at which yourself and other LaGrange merchants can sell goods to consumers in and around LaGrange?

Ans. Yes, they do.

Intr. No. 22. How do prices of goods affect their sale or consumption? Are more goods sold to consumers when they are cheap or when they are high? What is your opinion and experience in reference to this matter?

Ans. We could naturally sell more goods at low prices than at high prices. High prices would inevitably decrease the consumption.

Intr. No. 23. How will a reduction of the rates to LaGrange so as to make them not higher than rates to longer distanced competitors, affect the tonnage of traffic to LaGrange? Will it increase or diminish that tonnage? Give your reasons for whatever opinion you may express on this point.

Ans. It would increase the tonnage because we would be

able to compete with the points that now have the advantage of us and are now underselling us.

Intr. No. 24. What effect, if any, do relatively low or preferential rates to a locality have in increasing the population of such localities and inducing investment of capital there, and in promoting the prosperity of such locality in other respects?

Ans. It has all of these effects.

Intr. No. 25. What effect, if any, do relatively high rates to a locality or rates which discriminate against a locality, have on its prosperity and progress in the respects named in the preceding interrogatory?

Ans. It has the apposite effect from that mentioned in the preceding interrogatory.

355 Intr. No. 26. Do you know, or can you set forth any other matter, or thing, which may be of benefit or of advantage to the parties at issue in this cause, or either of them, or that may be material to the subject of this your examination, or the matters in question in this cause? If yea, set forth the same fully and at large in your answer.

Ans. I know of nothing further.

356 Cross Interrogatories and Answers.

Cross Intr. No. 1. If you state that merchants of Opelika or Atlanta sell goods at LaGrange or in territory around LaGrange, please specify to which of the lettered or numbered classes, used in the Southern States Freight Association Classification, the goods to which you refer belong, and state what kind of goods they are.

Ans. They sell goods of all kinds such as are numbered or classed in the Southern States Freight Association Classification.

Intr. No. 2. What are the carload and less than carload rate on sugar, molasses and rice from New Orleans to Opelika, Hogansville, Newnan, Palmetto, Fairburn and Atlanta, respectively?

Ans. I cannot obtain carload rates from New Orleans to those points on sugar, molasses and rice. The less than carload rate on sugar is as follows per hundred pounds. Hogansville, 38c.; Fairburn, 32c.; Palmetto, 33c.; Newnan, 34c.; Atlanta, 21c.; and Opelika, 18c.

Cross Intr. No. 3. State the population of and the mercantile and manufacturing enterprises of Atlanta.

Ans. Atlanta has a population of about one hundred thousand and large mercantile, banking and manufacturing enterprises.

Cross Intr. No. 4. If you state that transportation rates or charges enter into and affect the prices at which yourself and other LaGrange merchants can sell goods to consumers in and around LaGrange, state how much per hundred pounds you would reduce the price at which you sell goods to your customers in and around LaGrange. State the precise amount of reduction on each article in which you deal?

Ans. Being in the dry goods and clothing business it is impossible to tell exactly how much I could reduce the prices which I am now selling at, but they could be lowered and allow me to make the same profit I am now making, by reducing the freight rate. By lowering prices I could also increase my business which would also have its effect on reducing the prices at which I now sell. My line is not sold by the hundred pounds and so could not say what the reduction would be.

Cross Intr. No. 5. If you say that reduction of the rates to LaGrange will increase the tonnage of traffic to that place, what would be its effect upon the tonnage of those places that have heretofore sold goods in competition with LaGrange?

357 Ans. To increase the tonnage to LaGrange would to some extent decrease the tonnage at competitive points, but the increase in consumption would be the largest factor in increasing our tonnage.

Intr. No. 6. If you say that low or preferential rates to a locality have the effect to increase the population of such locality and to induce the investment of capital there, explain how the population or capital of LaGrange will be increased, if it is given the same but no lower rates than other local stations between West Point and Atlanta.

Ans. As I have stated in previous interrogatories a reduction in rates would greatly increase our business and all of those other effects would follow as a natural consequence. The business of a town is a pretty fair index to its general prosperity.

B. H. SEAY.

358 DEPOSITION OF M. L. FLEMING.

In the Circuit Court of the United States for the Southern District of Alabama.

The Interstate Commerce Commission
vs. In Equity, No. 207.
The Louisville & Nashville R. R. Co., The Western Railway of Alabama and The Atlanta & West Point R. R. Co.

Direct Interrogatories and Answers.

Interrogatories filed in the above entitled cause on behalf of the complainant therein to M. L. Fleming, of LaGrange, Ga.

The witness, M. L. FLEMING, being duly sworn to speak the truth, the whole truth and nothing but the truth, deposes as follows:

Intr. No. 1. What is your name and residence and in what occupation or business are you engaged?

Ans. M. L. Flemming, LaGrange, Ga., furniture dealer.

Intr. No. 2. If you say that you reside at LaGrange, Ga., state how long you have so resided and how long you have been engaged in business there.

Ans. I have resided here for twenty-three years and have been engaged in my present business for twenty years.

Intr. No. 3. State whether merchants of Opelika, Ala., and Atlanta, Ga., sell goods and do business at LaGrange and in territory around LaGrange?

Ans. I do not know.

Intr. No. 4. What articles of traffic or merchandise constitute the bulk of the traffic shipped from New Orleans to LaGrange?

Ans. I do not know.

Intr. No. 5. State whether LaGrange merchants in selling in territory in and around LaGrange, sugar, molasses and rice, and other articles of merchandise shipped from New Orleans to LaGrange, come in competition with Atlanta and Opelika merchants and whether or not Atlanta and Opelika merchants have an advantage in such competition.

Ans. I do not know.

359 Intr. No. 6. If in answer to the preceding interrogatory you state that LaGrange merchants are at a disadvantage in such competition state from what that disadvantage results.

Ans. I do not know.

Intr. No. 7. What are the carload rates from New Orleans to LaGrange on sugar molasses and rice? What are the less than carload rates from New Orleans to LaGrange on those articles?

Ans. I do not know.

Intr. No. 8. What are the carload rates from New Orleans to Hogansville, Newnan, Palmetto, Fairburn and Atlanta on sugar, molasses and rice? What are the less than carload rates from New Orleans to those points on sugar, molasses and rice?

Ans. I do not know.

Intr. No. 9. What are the carload rates and less than carload rates on sugar, molasses and rice from New Orleans to Opelika? What are carload and less than carload rates on first class goods from New Orleans to Opelika?

Ans. I do not know.

Intr. No. 10. What are the rates from Opelika to LaGrange on sugar, molasses, rice and first class goods?

Ans. I do not know.

Intr. No. 11. If in your answers to preceding interrogatories, you have stated that LaGrange is placed at a disadvantage in competition with Atlanta and Opelika merchants, and that this disadvantage results from discriminations in rates, give specific examples of such discriminations and state the extent of the injury to LaGrange, if any, as a city, mercantile center or jobbing point?

Ans. I do not know.

Intr. No. 12. State whether or not merchants of Atlanta can sell goods in Hogansville, Newnan, Palmetto and Fairburn, and also whether or not LaGrange merchants can sell goods at either of those places in competition with Atlanta merchants. If LaGrange merchants cannot compete with Atlanta merchants at those localities, explain why this is so.

Ans. I do not know.

Intr. No. 13. State whether traffic from New Or-
360 leans to LaGrange is shipped under a through bill of lading naming an aggregate through rate.

Ans. I do not know.

Intr. No. 14. Are goods ever shipped from New Orleans to LaGrange in carloads? If so, state whether or not they are in such case brought through to LaGrange in the same cars in which they are originally loaded at New Orleans.

Ans. I do not know.

Intr. No. 15. If you say that goods are seldom shipped in carloads from New Orleans to LaGrange, explain why this is so.

Ans. I do not know.

Intr. No. 16. On shipments of goods from New Orleans to Hogansville, Newnan, Palmetto and Fairburn, are the terminal expenses at those points greater or less per hundred pounds than at LaGrange, or the same?

Ans. I do not know.

Intr. No. 17. How many employes has the railroad company at LaGrange engaged in handling all the freight from all localities and all directions and what is the pay per month of such employes?

Ans. I do not know.

Intr. No. 18. State, if you can, the total tonnage of traffic per month or per annum at LaGrange, and what the pay of the employes engaged in handling that traffic amounts to per hundred pounds.

Ans. I do not know.

Intr. No. 19. State the population of and mercantile and manufacturing interests of LaGrange, Opelika, Hogansville, Newnan, Palmetto and Fairburn.

Ans. LaGrange has a population of about forty-five hundred, thirty-five stores, foundry, carriage factory, two cotton mills, creamery, planing mills, water works and electric lights, two railroads and several other smaller industries. I am not familiar with the other places.

361 Intr. No. 20. What other railroads if any, besides the Atlanta & West Point Railroad, reach LaGrange? What other railways, if any, reach Hogansville, Newnan, Palmetto and Fairburn?

Ans. The Macon & Birmingham also reaches LaGrange and the Central reaches Newnan. No others reach the other places.

Intr. No. 21. Do transportation rates or charges enter into and affect the prices at which yourself and other LaGrange merchants can sell goods to consumers in and around LaGrange?

Ans. Yes.

Intr. No. 22. How do prices of goods affect their sale or consumption? Are more goods sold to consumers when they are cheap or when they are high? What is your opinion and experience in reference to this matter?

Ans. More goods are sold when prices are lower than when they are high.

Intr. No. 23. How will a reduction of the rates to LaGrange so as to make them not higher than rates to longer distanced competitors, affect the tonnage of traffic to LaGrange? Will it increase or diminish that tonnage? Give your reasons for whatever opinion you may express on this point.

Ans. It will increase the tonnage by increasing business.

Intr. No. 24. What effect, if any, do relatively low or preferential rates to a locality have in increasing the population of such locality and in inducing the investment of capital there and in promoting the prosperity of such locality in other respects?

Ans. It has all of those effects.

Intr. No. 25. What effect, if any, do relatively high rates to a locality, or rates which discriminate against a locality have on its prosperity and progress in the respects named in the preceding interrogatory?

Ans. It has none of those effects.

362 Intr. No. 26. Do you know, or can you set forth any other matter or thing which may be of benefit to the parties at issue in this cause, or either of them or that may be material to the subject of this, your examination, or the matters in question in this cause? If yea, set forth the same fully and at large in your answer.

Ans. I know very little about the case, having been in ill health for some time; my son has looked after my business for me and consequently I know nothing of my own knowledge about it.

363 Cross-Interrogatories and Answers.

Cross-Intr. No. 1. If you state that merchants of Opelika and Atlanta sell goods at LaGrange or in territory around LaGrange, please specify to which of the lettered or numbered classes, used in the Southern States Freight Association Classification, the goods to which you refer belong and state what kind of goods they are.

Ans. I do not know.

Cross-Intr. No. 2. What are the carload and less than carload rates on sugar, molasses and rice, from New Orleans to Opelika, Hogansville, Newnan, Palmetto, Fairburn and Atlanta, respectively?

Ans. I do not know.

Cross-Intr. No. 3. State the population of and mercantile and manufacturing enterprises of Atlanta.

Ans. I could not enumerate them.

Cross-Intr. No. 4. If you state that transportation rates or charges enter into and affect the prices at which yourself and other LaGrange merchants can sell goods to consumers in and around LaGrange, state how much per hundred pounds you would reduce the prices at which you now sell goods to your customers in and around LaGrange. State the precise amount of reduction on each article in which you deal.

Ans. I do not know.

Cross-Intr. No. 5. If you say that reduction of the rates to LaGrange will increase the tonnage of traffic to that place, what would be its effect upon the tonnage of those places that have heretofore sold goods in competition with LaGrange?

Ans. I could not say.

Cross-Intr. No. 6. If you say that low or preferential rates to a community have the effect to increase the population of a particular locality, and to induce the investment of capital there, explain how the population or capital of LaGrange will be increased if it is given the same, but no lower rates than other local stations, between West Point and Atlanta.

Ans. I know nothing about the matter.

M. L. FLEMING.

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364 DEPOSITION OF H. D. GLANTON.

In the Circuit Court of the United States for the Southern District of Alabama.

The Interstate Commerce Commission
vs. In Equity, No. 207.
The Louisville & Nashville R. R. Co., The Western Railway of Alabama and The Atlanta & West Point R. R. Co.

Direct Interrogatories and Answers.

Interrogatories filed in the above entitled cause on behalf of the complainant therein to H. D. Glanton, of LaGrange, Ga.

The Witness, H. D. GLANTON, being duly sworn to speak the truth, the whole truth and nothing but the truth, deposes as follows:

Intr. No. 1. What is your name and residence and in what occupation or business are you engaged?

Ans. Henry D. Glanton, LaGrange, Ga., merchant.

Intr. No. 2. If you say that you reside at LaGrange, Ga., state how long you have so resided and how long you have been engaged in business there.

Ans. I have resided at LaGrange twenty-four years and been engaged in business there two and a half years.

Intr. No. 3. State whether merchants of Opelika, Ala., and Atlanta, Ga., sell goods and do business at LaGrange and in territory around LaGrange?

Ans. Yes, they do.

Intr. No. 4. What articles of traffic or merchandise constitutes the bulk of the traffic shipped from New Orleans, La., to LaGrange?

Ans. Sugar, molasses and rice.

Intr. No. 5. State whether LaGrange merchants in selling in territory in and around LaGrange, sugar, molasses and rice, and also other articles of merchandise shipped from New Orleans, come in competition with Atlanta and Opelika merchants and whether or not Atlanta and Opelika merchants have an advantage in such competition.

Ans. Yes; we, do, and the advantage is in favor of Atlanta and Opelika merchants.

365 Intr. No. 6. If in answer to the preceding interrogatory, you state that LaGrange merchants are at a disadvantage in such competition, state from what that disadvantage results.

Ans. From the fact that Atlanta and Opelika merchants are given a cheaper rate than LaGrange.

Intr. No. 7. What are the carload rates from New Orleans to LaGrange on sugar, molasses and rice? What are the less than carload rates from New Orleans to LaGrange on those articles?

Ans. Sugar 38c, rice 34-2c., and molasses 37c., per 100 lbs. All of these are less than carload rates. I do not know the carload rates.

Intr. No. 8. What are the carload rates from New Orleans to Hogansville, Newnan, Palmetto, Fairburn, and Atlanta on sugar, molasses and rice? What are the less than carload rates from New Orleans to those points on sugar, molasses and rice?

Ans. I do not know the carload rates on these articles except to Atlanta, which is 18c. on sugar. The less than carload rates on those articles, I do not know, except sugar which is to Hogansville 36c., to Fairburn 32c., to Palmetto 33c., to Newnan 34c., to Atlanta 21c.

Intr. No. 9. What are the carload and less than carload rates on sugar, molasses and rice from New Orleans to Opelika? What are the carload and less than carload rates on first-class from New Orleans to Opelika?

Ans. I do not know the rate on molasses and rice from New Orleans to Opelika. The carload rate on sugar is 18c., and the less than carload 21c. The rates on first-class goods, $1.03 per 100 lbs., in less than carload quantities.

Intr. No. 10. What are rates from Opelika to LaGrange on sugar, molasses and rice and first-class goods?

Ans. From Opelika to LaGrange, the rates on sugar are 14c., molasses 9c., and on first-class goods 32c. per 100 lbs.

Intr. No. 11. If in your answers to preceding interrogatories, you have stated that LaGrange is placed at a disadvantage in competition with Opelika and Atlanta merchants, in territory in and around LaGrange, and that this disadvan-
366 tage results from discriminations in rates, give specific examples of such discriminations and state the extent of the injury to LaGrange, if any, as a city, mercantile center, or jobbing point.

Ans. La Grange is placed at a disadvantage by Opelika merchants being enabled to ship first-class goods from New Orleans to Opelika for $1.03 per 100 lbs. and then reship that freight from Opelika to LaGrange for 32c. per 100 lbs., making a rate to the Opelika merchants of $1.35 per 100 lbs., from New Orleans to LaGrange. The rate to LaGrange merchants on first-class freight $1.43 per 100 lbs. on through shipments from New Orleans, through Opelika to LaGrange. This difference allows Opelika merchants to sell first-class goods in LaGrange for 8c. per 100 lbs. less than LaGrange merchants can sell them. The rate to Atlanta, through LaGrange from New Orleans is $1.03 per 100 lbs. The Atlanta merchant can reship the goods back to LaGrange for 40c. per 100 lbs., thereby enabling the Atlanta merchant to sell goods in LaGrange at the same price that LaGrange merchants can. This difference in rates of course cuts off territory, which justly belongs to LaGrange and gives this territory to Opelika and Atlanta. The rates from New Orleans and New York to every local station on the Atlanta & West Point R. R. is lower than the rates from the same points to LaGrange, notwithstanding the fact that the mileage is greater.

Intr. No. 12. State whether or not Atlanta merchants can sell goods in Hogansville, Newnan, Palmetto and Fairburn and also whether or not LaGrange merchants can sell goods at either of those places in competition with Atlanta merchants. If LaGrange merchants cannot compete with Atlanta merchants at those points explain why this is so.

Ans. Atlanta merchants can and do sell goods in Hogansville, Newnan, Palmetto, and Fairburn. LaGrange merchants cannot compete with Atlanta merchants at those places. LaGrange cannot compete with Atlanta at those places for this reason: Atlanta can ship goods from New Orleans to Atlanta and reship the same goods back to Hogansville for $1.39 per 100 lbs. La Grange has a rate from New Orleans of $1.43 per 100 lbs., from LaGrange to Hogansville 20c. per 100 lbs., making a cost to LaGrange merchants of $1.63 per 100 lbs., or 24c. per 100 lbs. more than it costs Atlanta to deliver goods at Hogansville. In the same way, Atlanta delivers goods to Newnan from New Orleans 36c. per 100 lbs. less than LaGrange can, and from New

Orleans to Palmetto for 48c. per 100 lbs. less than
367 LaGrange can; from New Orleans to Fairburn for 63c. per 100 lbs., less than LaGrange can. From all of these places LaGrange has the advantage in mileage from New Orleans.

Intr. No. 13. State whether traffic from New Orleans to LaGrange in carloads is shipped under a through bill of lading, naming an aggregate through rate.

Ans. Yes, it is.

Intr. No. 14. Are goods ever shipped from New Orleans to LaGrange in carloads? If so, state whether or not they are in such case brought to LaGrange in the same cars in which they are originally loaded.

Ans. Goods are seldom shipped in carloads from New Orleans to LaGrange. When they are shipped in carloads they are brought through to LaGrange in the same cars in which they are originally loaded.

Intr. No. 15. If you say that goods are seldom shipped from New Orleans to LaGrange in carloads, state why this is so.

Ans. LaGrange's freight rate being so much more than Atlanta and Opelika's her outlet is cut off so much that she cannot handle carloads and compete with these places. For this reason goods are seldom shipped from New Orleans to LaGrange in carloads.

Intr. No. 16. On shipments of goods from New Orleans to Hogansville, Newnan, Palmetto and Fairburn, are the terminal expenses at those points greater or less per 100 lbs. than at LaGrange or the same?

Ans. Very little difference.

Intr. No. 17. How many employes has the railroad company at LaGrange engaged in handling all the freight, from all localities and all directions and, what is the pay of each per month, of such employes?

Ans. The Atlanta & West Point R. R. at LaGrange has seven employes engaged in handling all the freight and passenger business from all localities and all directions. The pay per month of these employes is in all about $300.

Intr. No. 18. State, if you can, the total tonnage of traffic per month or per annum at LaGrange, and what the pay of the employes engaged in handling that traffic, amounts to per 100 lbs.

Ans. I do not know.

368 Intr. No. 19. State the population and manufacturing and mercantile enterprises of LaGrange, Opelika, Hogansville, Newnan, Palmetto and Fairburn.

Ans. LaGrange has a population of something over four

thousand, about thirty-five mercantile establishments, two cotton mills, two carriage factories, two railroads, electric lights and water works, planing mill, oil mills, grist mill, foundry, creamery, two female colleges. Opelika has about the same population as LaGrange, about the same number of mercantile establishments, three railroads, electric lights, water works, and several other smaller industries. Hogansville's population is about eight hundred, and she has about twenty mercantile establishments. Newnan's population is about four thousand or forty-five hundred, about thirty-five mercantile establishments, two railroads, guano factory, foundry, machine shops, electric lights and water works. Palmetto has a population of about eight hundred. Fairburn has a population of about eight hundred, possibly a few more, a harness factory and about eighteen stores.

Intr. No. 20. What other railways, if any, reach LaGrange, besides the Atlanta & West Point Railroad? What other railroads, if any, reach Hogansville, Newnan, Palmetto and Fairburn?

Ans. The Macon & Birmingham also reaches LaGrange. No others reach Hogansville, Palmetto and Fairburn. The Central also reaches Newnan.

Intr. No. 21. Do transportation rates enter into and affect the price at which yourself and other LaGrange merchants can sell goods to consumers in and around LaGrange?

Ans. They do.

Intr. No. 22. How do prices of goods affect their sale or consumption? Are more goods sold to consumers when they are cheap or when they are high? What is your opinion and experience in reference to this matter?

Ans. More goods are sold to consumers when they are cheap than when they are high.

Intr. No. 23. How will a reduction of the rates to LaGrange so as to make them not higher than rates to longer distanced competitors affect the tonnage of traffic to LaGrange? Will it increase or diminish that tonnage? Give your reasons for whatever opinion you may express on this point.

369 Ans. If LaGrange is given the same rates as longer distanced competitors the tonnage of traffic will be greater. With an equal freight rate we can sell goods cheaper than we can now afford to do, and we can then compete with those towns, which at present have lower freight rates.

Ans. [Int.] No. 24. What effect, if any, do relatively low or preferential rates to a locality have in increasing the population of such locality and inducing the investment of capital there, and in promoting the prosperity of such locality in other respects?

Ans. The population will be increased, it will encourage capital to invest there and promote prosperity in every way.

Intr. No. 25. What effect, if any, do relatively high rates to a locality or rates which discriminate against a locality, have on its prosperity or progress in the respects named in the preceding interrogatory?

Ans. Relatively high rates to a locality or rates which discriminate against a locality do not encourage capital to invest there, do not increase the population and therefore lessens prosperity in every way.

Intr. No. 26. Do you know, or can you set forth any other matter, or thing, which may be of benefit or advantage to the parties at issue in this cause or either of them, or that may be material to the subject of this your examination, or the matters in question in this cause? If yea, set forth the same fully and at large in your answer.

Ans. I know nothing further of benefit to either party.

370 Cross-Interrogatories and Answers.

Cross-Intr. No. 1. If you state that merchants of Opelika or Atlanta sell goods at LaGrange, or in territory around LaGrange, please specify to which of the lettered or numbered classes, used in the Southern States Freight Association Classification, the goods to which you refer belong and state what kinds of goods they are.

Ans. Atlanta and Opelika merchants sell all kinds of goods in and around LaGrange and they belong to all of the lettered and numbered classes used in the Southern States Freight Association Classification.

Cross-Intr. No. 2. What are the carload and less than carload rates on sugar, molasses and rice, from New Orleans to Opelika, Hogansville, Newnan, Palmetto, Fairburn and Atlanta, respectively?

Ans. From New Orleans to Opelika the carload rate on sugar is 18c. per 100 lbs. From New Orleans to Atlanta the carload rate is also 18c. on sugar. Hogansville, Newnan, Palmetto and Fairburn have no carload rate. The less than carload rate from New Orleans to Opelika on sugar is 21c. per 100 lbs., to Atlanta 21c., to Hogansville 36c., to Newnan 34c., to Palmetto 33c., to Fairburn 32c. Do not know the rates on molasses and rice.

Cross-Intr. No. 3. State the population of and the mercantile and manufacturing enterprises at Atlanta.

Ans. Atlanta has a population of about ninety thousand.

Cannot name all of her manufacturing and mercantile enterprises, but they are very numerous.

Cross-Intr. No. 4. If you state that transportation rates or charges enter into and affect the price at which yourself and other LaGrange merchants can sell goods in and around LaGrange, state how much per 100 lbs. you would reduce the price at which you sell goods to your customers, in and around LaGrange. State the precise amount of reduction on each article in which you deal.

Ans. I would reduce the price per 100 lbs., just so much as the railroads reduced the rate per 100 lbs. As to the precise amount of reduction on each article in which I deal, would depend largely upon the nature and amount of reduction in the freight rate upon each specific class of articles.

371 Cross-Intr. No. 5. If you say that reductions of the rates to LaGrange will increase the tonnage of traffic to that place, what would be its effect upon the tonnage of those places that have heretofore sold goods in competition with LaGrange?

Ans. The tonnage to those places that have heretofore sold goods in competition with LaGrange would not be so great as before, still LaGrange's increase in tonnage would be largely due to the reduction which she could afford to make in prices.

Cross-Intr. No. 6. If you say that low or preferential rates have the effect to increase the population of a particular locality, and to induce the investment of capital there, explain how the population or capital of LaGrange will be increased, if she is given the same but no lower rates than other local stations between West Point and Atlanta?

Ans. The population and capital of LaGrange would be increased if she was given the same freight rate that are given to her competitors, for then she could sell the trade in her own territory which is now being sold by her competitors.

H. D. GLANTON.

I, E. R. Bradfield, Jr., of LaGrange, Georgia, the commissioner named in the stipulation attached to the interrogatories herein, do certify that I called before me said witnesses, to-wit: F. E. Calloway, E. R. Bradfield, D. A. Dansby, T. S. Bradfield, H. H. Childs, T. J. Harwell, J. E. Dunson, J. H. Edmondson, W. V. Gray, B. H. Seay, M. L. Fleming, and H. D. Glanton, and having duly sworn them to speak the truth, the whole truth and nothing but the truth, took down their answers to said interrogatories, and that the foregoing pages

contain a full, true and correct report of the testimony of said witnesses.

This the 8th day of June, 1899.

E. R. BRADFIELD, Jr, Commissioner.

Received and filed this the 10th day of June, A. D. 1899, and published by agreement on file this the 19th day of June, A. D. 1899. RICHARD JONES, Clerk.

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372 TESTIMONY ON THE PART OF THE DEFENDANTS, THE LOUISVILLE & NASHVILLE RAILROAD CO., ET AL.

Circuit Court of the United States for the Southern District of Alabama.

The Interstate Commerce Commission

No. 207. vs.

The Louisville & Nashville Railroad Co., et al.

Deposition of T. J. Hunter.

T. J. HUNTER, sworn, testified:

Direct Examination by Judge Baxter.

1st Interrogatory. State your name, age, residence and occupation.

Answer. Thomas J. Hunter, age 39, Atlanta, Georgia, Auditor Atlanta & West Point Railroad and Western Railway of Alabama.

2nd Int. The Commission, in their report and opinion in this case on page 6, state that the defendants "claim that all the rates from Atlanta to Fairburn are reasonable including the rates on first-class freight which amounts to 22 cents for 18 miles (equal to more than 24 cents a ton a mile)." Have you prepared a statement showing the tonnage of first-class freight, the tonnage of second-class freight and the tonnage of other classes of freight and commodities, and the total tonnage from Atlanta to Fairburn, Palmetto, Newnan, and Hogansville, respectively, and if so state whether such statement shows what per cent the first-class tonnage bears to the total tonnage, what per cent the second-class tonnage bears to the total tonnage and what per cent the tonnage of the other classes and com-

modities bear to the total tonnage. If you answer that you have prepared such a statement please file said statement as exhibit "A" to your deposition.

Answer. I have prepared such a statement and file it as exhibit "A."

Int. 3. Has said statement been compiled and prepared from the books of the Atlanta & West Point Railroad, and say whether said statement is correct or incorrect.

Answer. The statement was prepared not from the books, but from the original way bills. We took the months of August and September, and then took an average of those two months from the year which are very fair months
373 for that. These two months we were working on in the office and we took them.

Int. 4. Describe briefly and generally the kind of articles that fall under what is designated as first-class freight (I do not mean all of them of course.)

Answer. Bicycles, hats, shoes, clothing, vehicles, dry goods (not including cotton factory products), musical instruments, agricultural implements of a very bulky nature, and drugs, cigars, etc.

Int. 5. What per cent does the tonnage of first-class freight from Atlanta to Fairburn bear to the total tonnage from Atlanta to Fairburn, as shown by said statement marked exhibit "A"?

Ans. Three per cent.

Int. 6. State whether the proportion which the rate from Atlanta to Fairburn on first-class freight bears to the value of the articles comprising that class of freight is considerable or inconsiderable.

Ans. I will have to give my opinion of that that it is inconsiderable.

Int. 7. It is stated in the report and opinion of the commission on page 15 that the average revenue per ton per mile received on all traffic by the Atlanta & West Point Railroad and Western Railway of Alabama was nearly twice as much as the average revenue per ton per mile received on all traffic by all roads in the United States for the year ending June 30, 1895. Please refer to volume called "Statistics of Railways in the United States" for the year ending June 30, 1897, published by the Interstate Commerce Commission, and state what the Commission shows on page 66 as to the net results of operations of all railways in the United States for the
374 year ending June 30, 1897, and for the years ending June 30, 1894 and 1895.

Ans. I will just quote from the book here (reading), "The

Commission said: 'The net results of these several movements obliged the railways of the United States to declare a deficit of $6,120,483. While this deficit is indeed considerable, it does not indicate so disastrous a year as the year ending June 30, 1894, and 1895, when the deficits amounted to $45,851,294 and $29,845,241, respectively.' "

Int. 8. Please refer to the "Statistics of Railways of the United States" for the year ending June 30, 1895, published by the Interstate Commerce Commission, page 359 and state what was the average revenue per ton per mile received on all traffic by all railroads in the United States for that year.

Ans. .839 of a cent.

Int. 9. What was the revenue per ton per mile received on all traffic by the Atlanta & West Point Railroad and Western Railway of Alabama for the year ending June 30, 1895?

Ans. 1.65 of a cent.

Int. 10. What was the total number of tons carried one mile by the Atlanta & West Point Railroad and Western Railway of Alabama during the year ending June 30, 1895?

Ans. 31,611,438 tons.

Int. 11. If those tons had been carried at the average revenue per ton per mile received on all traffic by all roads in the United States for the year ending June 30, 1895, what effect would it have had over the earnings from operation of the Atlanta & West Point Railroad and Western Railway of Alabama for the same year.

Ans. It would have reduced our net earnings $256,095.61; and would have left our net earnings $118,125.00.

Int. 12. What were the fixed charges of the Atlanta & West Point Railroad and Western Railway of Alabama for the year ending June 30, 1895?

Ans. $181,862.49.

375 Int. 13. Would the operation of the Atlanta & West Point Railroad and Western Railway of Alabama for that year have shown a surplus or a deficit and how much, if they had only charged the average revenue per ton per mile received on all traffic by all roads in the United States for that year.

Ans. There would be a deficit of $63,727.49.

Int. 14. How many miles of road were operated by the Atlanta & West Point Railroad and Western Railway of Alabama for the year ending June 30, 1895.

Ans. 219.3 miles.

Int. 15. In the report and opinion of the Commission in this case on page 18, it is stated that "At the tariff rates then in effect over this line from New Orleans to LaGrange and At-

lanta the revenue to both points on this business should have been much greater, or else the tonnage so stated was much less than was actually carried by these companies." * * * "The same statement showing a movement of 100 tons New Orleans to LaGrange in the year ending June 30, 1895, sets forth that included in such movement was 17 tons of molasses, 13 tons of sugar and 6 tons of sixth class freight which at the lowest prevailing combinations on Atlanta appear to call for a total revenue of $287.60; and this alone exceeds the stated revenue on New Orleans freight of $262.07 with 60 tons remaining to be accounted for. This testimony seems plainly contradictory." Please explain the supposed contradiction.

Ans. The revenue shown was only the proportion accruing to the Western of Alabama Railway and the Atlanta & West Point Railroad, and did not include the total revenue accruing to all lines from New Orleans to LaGrange.

376 EXHIBIT "A" (With Direct Answer No. 2).

Fairburn.

Classes.	Weight.	Per cent.
First Class	29607	03.0
Second Class	19687	02.0
Other Classes and Commodities	946706	95.0
	996000	

Palmetto.

Classes.	Weight.	Per cent.
First Class	22651	02.0
Second Class	6784	00.6
Other Classes and Commodities	1124565	97.4
	1154000	

Newnan.

Classes.	Weight.	Per cent.
First Class	116553	01.8
Second Class	33217	00.5
Other Classes and Commodities	6374230	97.7
	6524000	

Hogansville.

Classes.	Weight.	Per cent.
First Class	56573	03.1
Second Class	13944	00.8
Other Classes and Commodities	1735483	96.1
	1806000	

This information is based on billing from Atlanta for the months of August and September, 1898, which will give a very fair average.

Filed as exhibit "A" to testimony of Mr. Hunter.
[Seal] WM. C. MASSEY, N. P.

377 Cross Examination by Mr. Shaver.

Cross-Int. 1. This exhibit "A" covers freight from Atlanta back to Fairburn, Palmetto, Newnan and Hogansville, does it?

Ans. Yes, sir.

Cross-Int. 2. Does it relate exclusively to freight originating in Atlanta?

Ans. Oh, no sir; all freights to these points from Atlanta, either originating or passing through Atlanta.

Cross-Int. 3. Can you give a similar statement as to freight originating in Atlanta or passing through Atlanta to LaGrange?

Ans. I cannot do that, for I only keep my way bills for six months. I can get a similar statement for any other two months in the last six months. Of course we can get it up by going to LaGrange if the agent has his way bills filed properly, but I don't know that it would be as reliable information as if I got some two months in the past six months, for I have these way bills in my office.

Cross-Int. 4. I will ask you to give similar data as to traffic originating in Atlanta or passing through Atlanta to LaGrange for the months of January and February of this year.

Ans. I file it as exhibit "B."

Cross-Int. 5. You attached to exhibit "4" to your testimony before the commission in this case a statement of tonnage by classes and commodities from New Orleans to Atlanta, Georgia, and local stations on the Atlanta & West Point Railroad and Western Railway of Alabama for the year ending June 30, 1895. Will you please prepare and attach, as an exhibit to your deposition, a statement of tonnage by classes and commodities from all directions to Atlanta, Georgia; Newnan, Georgia; Opelika, Alabama; Montgomery, Alabama; and Selma, Alabama, and also to local stations on the Atlanta & West Point Railroad and Western Railway of Alabama for the month of January, 1899.

378 Ans. I file it as exhibit "C."

Cross Int. 6. Name all the points treated as competitive points between Selma, Alabama, and Atlanta, Georgia, on the Western Railway of Alabama and Atlanta & West Point Railroad.

Ans. Atlanta, Georgia; Newnan, Georgia; Opelika, Alabama; Montgomery, Alabama; Selma, Alabama.

Cross-Int. 7. Is not LaGrange, Georgia, on two railroads?

Ans. Yes, sir.

Cross-Int. 8. Is not LaGrange, Georgia, the only station between Selma and Atlanta which is on two roads that is not given competitive rates.

Ans. Well, do you count Milstead? We have two other stations. They are two other roads and the names of these other stations are Chehaw and Milstead. The road from Chehaw to Tuskeegee is five miles in length, and it connects with no other road at Tuskeegee.

Cross-Int. 9. The road from Milstead is to Tallassee?

Ans. Yes, sir.

Cross-Int. 10. What is its length?

Ans Seven miles.

Cross-Int. 11. Does it connect with any other road at Tallassee?

Ans No, sir.

Cross-Int. 12. Upon what road is LaGrange besides the Atlanta & West Point Railroad?

Ans. The Macon & Birmingham.

Cross-Int. 13. What is the length of that road?

Ans. One hundred and five miles.

Cross-Int. 14. Does not the Macon & Birmingham meet other roads at several other points on its line between LaGrange and Macon?

Ans. I suppose it does; I don't know their junction points, but I know it does with some.

Cross-Int. 15. The Macon & Birmingham Railroad extends from LaGrange to Macon?

379 Answer. Yes, sir.

Cross-Int. 16. Does it not meet other roads at Macon?

Answer. Yes, sir.

Cross-Int. 17. In your examination before the Interstate Commerce Commission you stated that if LaGrange were given the same rates on competitive traffic from all directions as Atlanta that the road would lose $5,000 per annum; can you state what the loss would be to the road if LaGrange were given the same rates as Atlanta on traffic from New Orleans alone?

Answer. I could get that up; I don't know that we have a statement to that effect. I will file such statement, marked Exhibit "D" for the year ending April 30, 1899. That statement would not compare with any report we render the Interstate Commerce Commission nor appear in our annual reports,

for the reason that all Interstate Commerce reports are for the fiscal year ending June 30, and our annual reports to the stockholders and directors end June 30th.

Cross-Int. 18. You cannot furnish such a statement for the year ending June 30, 1896?

Ans. No, sir.

Cross-Int. 19. Or for any succeeding year ending June 30, since 1896?

Ans. No, sir. Of course, I can furnish a statement for the year ending June 30, 1899, as soon as it is finished.

Cross-Int. 20. Would the roads charge rates higher than reasonable rates from New Orleans to Atlanta in the absence of competition?

Answer. I don't know.

Cross-Int. 21. Are the rates from New Orleans to Atlanta made lower than they otherwise would be because of competition?

Ans. I would assume they are. Really, I don't know, but I cannot answer positively.

380 EXHIBIT "B" with Cross Answer No. 4.

Statement showing tonnage on first, second and other classes of freight from Atlanta to LaGrange for the months of January and February, 1899.

Classes	Weight.	Per cent.
First-class....	36,635	01.3
Second-class....	22,098	00.8
Other classes and commodities..	2,679,267	97.9
	2,738,000	

Filed as Exhibit "B" to testimony of Mr. Hunter.
[Seal] WM. C. MASSEY, N. P.

381 EXHIBIT "C" with Cross Answer No. 5.

Statement of classes and commodities from all points to Atlanta, Newnan, Opelika, Montgomery, Selma and local stations on the Atlanta and West Point Railroad and the Western Railway of Alabama for the month of January, 1899.

	Atlanta	Newnan	Opel.	Montg.	Selma	Loc. Station
	Tons	Tons	Tons	Tons	Tons	Tons
First-class	25	13	14	54	46	56
Second-class	19	6	21	59	21	39
Third-class	17	14	14	20	32	65
Fourth-class	53	17	14	36	29	125
Fifth-class	17	11	17	56	38	76
Sixth-class	35	41	33	59	77	242
Wheat	....	92	66	1	....	1
Corn	18	147	355	32	199	279
Oats	467	....	182	236	272	122
Cotton	531	1	85	372	114	216
Cotton-seed, meal, oil and hulls	1,007	....	40	803	127	710
Flour and meal	238	34	319	437	247	655
Fruit	63	2	4	16	6	8
Hay and bran	27	18	96	197	65	161
Vegetables, peas, rice, etc	178	15	21	61	71	28
Lumber	809	130	102	274	....	521
Cord wood	492	24	....	390	....	....
Telegraph poles	....	....	24	....	....	12
Staves, shingles, etc	24	....	....	29	....	93
Cattle	114	....	....	....	....	1
Horses and mules	50	20	....	26	94	42
Bacon, meat and lard	445	24	52	55	132	131
Pig iron	174	....	....	28	....	32
Coal	1,538	231	178	5,766	1,190	2,728
Coke	21	44	....	....	21	22
Brick	....	67	....	14	61	525
Marble, slate and stone	15	2	....	153	....	49
Sand, lime and cement	....	....	12	766	14	93
Salt	15	....	29	13	90	30
Bar, plate and other iron	50	50	27	114	69	23
Starch and miss. groceries	7	3	18	58	36	83
Sugar and molasses	710	19	95	24	108	89
Liquors	31	2	13	14	12	20

Paper, bagging, waste and ties.	22	29	33	80	19	29
Fertilizers	175	451	710	30	75	914
Wood in shape, barrels	101	8	9	14	14	12
Phosphate rock		298	....	....	....	....
Petroleum and its products		....	33	32	14	....
Miscellaneous ..	51	16	56	78	55	57
Total	7,539	1,829	2,672	10,391	3,348	8,289

Filed as Exhibit "C" to testimony of Mr. Hunter.
[Seal] WM. C. MASSEY, N. P.

382 EXHIBIT "D" with Cross Answer No. 17.

Statement showing loss to the Atlanta and West Point Railroad and the Western Railway of Alabama on business from New Orleans to LaGrange if same was revised on basis of Atlanta rates, for year ending April 30th, 1899.

Revenue based on original rates.... ....$188.52
Revenue based on Atlanta rates.... .... 140.50

$48.02, or 25.5% of total revenue.

Filed as Exhibit "D" to testimony of Mr. Hunter.
WM. C. MASSEY, N. P.

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383 DEPOSITION OF R. E. LUTZ.

R. E. LUTZ, sworn, testified:

Direct examination by Judge Baxter.

(Note: The usual questions regarding "name, age, residence and occupation" was not asked Mr. Lutz.)

Interrogatory 1. The Commission on page 7 of their report and opinion in this case say: "LaGrange is itself a competitive point whenever the railroad carriers to that city see fit to actively engage in competition." What railroad enters LaGrange except the Atlanta & West Point Railroad?

Answer. The Macon & Birmingham Railroad.

Int. 2. Is there any other railroad that enters LaGrange except the Atlanta & West Point and Macon & Birmingham?

Ans. No, sir.

Int. 3. Is LaGrange situated on any navigable river or other water course?

Ans. No, sir.

Int. 4. What is the length of the Macon & Birmingham Railroad and at what point is its eastern terminus?

Answer. The Guide shows 105 miles. It runs from LaGrange to Sofkee, a distance of 97 miles, and the distance between Sofkee and Macon over the Georgia Southern & Florida Railroad is 8 miles.

Int. 5. Please refer to Poor's Manual for 1898 and state what it shows with reference to the number of locomotives and the number of freight cars owned by the Macon & Birmingham Railroad.

Ans. (Reading) "Locomotives, 4; freight cars, box, 125; flat, 67; total, 192."

Int. 6. State what "Poor's Manual" for 1898 shows for the gross earnings, operating expenses and a deficit from operation of the Macon & Birmingham Railroad for the year ending June 30, 1897.

384 Ans. (Reading) "Gross earnings . . $61,970.00
Operating expenses. 83,057.00
Deficit from operations. . . . . 21,087.00"

Int. 7. What feasible through routes might be formed from New Orleans to LaGrange, using the Macon & Birmingham as part of each of said routes, and not using any of the lines of any of the defendant companies as part of such routes? Give the names of the different carriers that would have to consent to the operation of each of said routes and give the distances from New Orleans to LaGrange by each of said routes, and also give the distances from New Orleans to LaGrange via the route furnished by the defendant companies' lines.

Ans. I have a memorandum of five, and could give more than that:

Route 1.

Illinois Central, New Orleans to Winona, Mississippi; Southern Railway from Winona through Birmingham and Atlanta to Woodbury, Georgia; Macon & Birmingham Railroad, Woodbury to LaGrange—742 miles.

Route 2.

New Orleans & Northeastern Railroad, New Orleans to Meridian, Miss.; Alabama, Great Southern Railroad, Meridian

to Birmingham, Alabama; Southern Railway from Birmingham through Atlanta to Woodbury, Georgia; Macon & Birmingham, Woodbury to LaGrange; the distance being 612 miles.

Route 3.

Illinois Central from New Orleans to Winona, Miss.; Southern Railway from Winona to Birmingham, Alabama; Central of Georgia Railway from Birmingham to Macon; Mobile & Birmingham Railroad, Macon to LaGrange; the distance being 841 miles.

Route 4.

New Orleans & Northeastern Railroad from New Orleans to Meridian; Alabama Great Southern, Meridian to Birmingham; Central of Georgia Railroad, Birmingham to Macon, Georgia; Macon & Birmingham Railroad, Macon to LaGrange;
385 the distance being 711 miles.

Route 5.

New Orleans & Northeastern Railroad from New Orleans to Meridian; Alabama Great Southern from Meridian to Birmingham; Southern Railway, Birmingham to Bremen, Georgia; Chattanooga, Rome & Southern Railroad, Bremen to Carrolton, Georgia; Central of Georgia Railway, Carrolton to Griffin, Georgia; Southern Railway, Griffin to Woodbury; Macon & Birmingham, Woodbury to LaGrange; distance 594 miles.

The distances via defendant companies' lines, New Orleans to LaGrange is 425 miles.

Int. 8. I notice from a description of the different routes given in your last answer that all of said routes have either the Southern Railway or the Central of Georgia Railway as one of the lines furnishing the route; can you offer any reason why the Southern Railway would not be willing to accept its proportions of the same through rates on traffic from New Orleans to LaGrange as it now receives on traffic from New Orleans to Atlanta?

Ans. There are two reasons: First, the Southern Railway's rate per ton per mile would be less on traffic handled at New Orleans destined to LaGrange than to Atlanta; secondly, in my opinion the Southern Railway would not participate in a rate, New Orleans to LaGrange, that would be less than the rate on same commodities, New Orleans to local stations between Birmingham and Woodbury.

Int. 9. Can you suggest any reason why the Central of Georgia Railway would not be willing to accept its proportions of the

same through rates on traffic, New Orleans to LaGrange, as it now receives on traffic from New Orleans to Atlanta?

Ans. The Central Railway of Georgia would not participate in a rate, New Orleans to LaGrange, that would be less than rates on the same commodities from the same point to their local stations between Birmingham and Macon.

386 Int. No. 10. In the Report and Opinion of the Commission, page 12, it is stated that Opelika, Alabama, takes substantially the Atlanta rates from New Orleans, New York, Philadelphia, Boston, Baltimore and Louisville, and 1.17 on first class (ten cents higher than to Atlanta) from Cincinnati.

Explain why it is that Opelika takes the rates referred to by the Commission.

Ans. With the exception of the fact of the lower classes, Opelika, Alabama, takes substantially the Atlanta rates from New Orleans, New York, Philadelphia, Boston, Baltimore and Louisville, and 1.17 on first class (ten cents higher than to Atlanta) from Cincinnati. Until 1888 the rates to Opelika from all points were made of combination either on Columbus or Montgomery. About the time the Interstate Commission law went into effect the Central of Georgia Railway and the Ocean Steamship companies being under one management and control, and leading direct from the eastern ports to Opelika, controlled the making of rates from the east to that point, decided that under the Interstate Commerce law the rates from the east to Opelika should not be higher than to Birmingham, Alabama, put such rates into effect. The Central of Georgia Railway also took the position that they could not charge higher rates from the West to Opelika, Ala., than were charged to Columbus, Georgia, adopted and put into effect rates to Opelika the same as to Columbus.

Int. 12. Did the Atlanta & West Point Railroad and Western Railway of Alabama meet these rates?

Ans. The Atlanta & West Point Railroad and Western Railway of Alabama were forced by reason of these rates being put into effect by the Central of Georgia Railroad to meet the rates, as made by the Central of Georgia Railway, or retire from the business.

Int. 13. State whether the rates from New Orleans to Atlanta are to any extent controlled by competition, and
387 whether or not higher rates might be reasonably used from New Orleans to Atlanta were it not for that competition.

Ans. Yes; the rates from New Orleans to Atlanta are largely controlled by competition. Were it not for competi-

tion, especially from the east, higher rates might be reasonably charged from New Orleans to Atlanta.

Cross-Examination by Mr. Shaver.

Note:—Counsel for the Commission objects to the data taken from Poor's Manual as incompetent evidence, and also objects to the witness' statement as to what the Commission decided as to Opelika rates, on the ground that the decision itself is the best evidence of what the Commission decided.

Cross-Int. 1. Is not the Macon & Birmingham road a broad gauge road?

Ans. It is considered a standard gauge road.

Cross-Int. 2. Is not that road intersected at several points by other roads between LaGrange and Macon?

Ans. Yes, sir; it is crossed by the Central of Georgia Railway at Yatesville and Woodbury, Georgia. It is intersected by a branch of the Central of Georgia Railway at Greenville, Georgia and connects with the Georgia Southern & Florida at Sofkee.

Cross-Int. 3. What roads reach Macon?

Ans. The Georgia Southern & Florida Railway, the Central of Georgia Railway, the Southern Railway, the Macon & Dublin Railroad and the Georgia Railway.

Cross-Int. 4. Do these roads which reach Macon form lines or parts of lines to either Savannah, Charleston, Brunswick or all of these ports?

Answer. Yes, sir.

388 Cross-Int. 5. The present business of the Macon & Birmingham Railroad is small, is it not?

Answer. It seems so from the annual report.

Cross-Int. No. 6. Can you state whether or not the equipment of that road is adequate to its present business?

Answer. I cannot state positively. I should think it would be.

Cross-Int. 7. If the business of that road should be increased is it not probable that there would be an increase of equipment sufficient to transact that business?

Ans. I think so.

Cross-Int. 8. Would the roads in the absence of competition charge more than reasonably high rates to Atlanta or other competitive points?

Ans. I think not.

Cross-Int. 9. Are the rates from New Orleans to Atlanta made lower than they otherwise might be by competition?

Ans. Were it not for competition I think possibly that the

rates from New Orleans to Atlanta might be advanced.

Cross-Int. 10. Are the rates from New Orleans to LaGrange made higher than they otherwise would be by reason of competition at Atlanta?

Answer. No, sir.

Cross-Int. 11. The present rates then from New Orleans to LaGrange made up of the through rates for the haul from LaGrange to Atlanta, plus local from Atlanta back to LaGrange, would be charged even if there were no competition at Atlanta; is that the case?

Answer. Yes, sir.

Cross-Int. 12. Are the rates from Montgomery, Alabama, to Atlanta, competitive, or in other words, rates controlled by competition?

Answer. Yes, sir.

Cross-Int. 13. The rates from Montgomery to Hogansville, Newnan, Palmetto and Fairburn are all higher than to LaGrange; why is this so?

389 Ans. For the reason that the rates were made from Montgomery to Hogansville—in fact all stations of the Atlanta & West Point Railroad—are upon the locals unless the rates from Montgomery to Atlanta plus the local back, would make a less total.

Cross-Int. 14. Hogansville, Newnan, Palmetto and Fairburn are all longer distance points from Montgomery than LaGrange. Is not this one reason for the higher rates to the former points than to LaGrange?

Answer. It would be unless, as stated, the combination on Atlanta, plus the local will make a less total.

Cross-Int. 15. Are carriers compelled to charge Georgia Railroad Commission rates as parts of other rates on interstate traffic originating outside of Georgia?

Answer. No, sir.

Cross-Int. 16. Do the carriers charge rates fixed by the Georgia Railroad Commission for local hauls in the State of Georgia as parts of other rates on interstate commerce from Baltimore, Philadelphia, New York and Boston to Atlanta?

Answer. No, sir.

Cross-Int. 17. Do the defendants in this case charge as parts of the through rates from New Orleans to Atlanta, rates fixed for local hauls in the State of Georgia by the Georgia Railroad Commission?

Answer. No, sir.

Cross-Int. 18. Do carriers charge rates fixed by the Georgia Railroad Commission of Georgia for strictly local hauls in the State of Georgia as parts of other rates on Interstate Commerce

from Chicago, Cincinnati and other Ohio river points, or from Missouri river points to Atlanta?

Answer. No, sir.

Cross-Int. 19. Do carriers charge rates fixed by the Georgia Railroad Commerce for strictly local hauls in the State of Georgia as parts of other rates, on interstate commerce from any direction?

Answer. No, sir.

Cross-Int. 20. Are not the same classes of freight which are shipped from New Orleans to LaGrange also shipped
390 from Baltimore, Philadelphia, New York and Boston to LaGrange?

Ans. Yes, sir.

Cross-Int. 21. Cannot goods be transported from Baltimore, Philadelphia, New York and Boston to LaGrange via ocean steamship to Charleston, Savannah or Brunswick and thence by rail over the Macon & Birmingham Railroad as terminal carrier?

Ans. Yes, sir.

Cross-Int. 22. Are not the same classes of goods which are shipped from New Orleans to LaGrange also shipped from Cincinnati and other Ohio river points, and from Chicago to LaGrange, the same commodities that are shipped from New Orleans?

Answer. I don't know whether they ship sugar and molasses from this territory.

Cross-Int. 23. Do they ship class goods?

Ans. Yes.

Cross-Int. 24. Are sugar and rice shipped from Baltimore New York, Philadelphia and Boston to Atlanta to the same extent as from New Orleans?

Ans. Not having the statistics on hand it would be hard for me to answer that question. There is considerable sugar shipped from the east—some molasses. I doubt whether there is little or any rice from the east.

Cross-Int. 25. Is it not your opinion that sugar, rice and molasses are shipped in larger quantities from New Orleans to Atlanta than from New York, Philadelphia and Boston?

Ans. It is true of the first two—sugar and molasses.

Cross-Int. 26. Are sugar, molasses and rice shipped from Chicago or Cincinnati and other Ohio river points to Atlanta to the same extent as from New Orleans?

Answer. No, sir.

Cross-Int. 27. Where does the sugar, molasses and rice come from that is shipped from New York, Baltimore, Philadelphia and Boston to Atlanta?

Answer. I don't know.

391 Cross-Int. 28. The rates by all rail lines from Baltimore, New York, Philadelphia and Boston to Atlanta, are somewhat higher than by rail and water lines, are they not?

Answer. Yes, sir.

Cross-Int. 29. What is the all rail first class rate from New York to Atlanta?

Ans. The all rail rate New York to Atlanta is 1.26; the rail and water rate from New York to Atlanta is 1.14.

Cross-Int. 30. What traffic in the main is competitive between the all rail and rail and water lines? Is it the lower classes of traffic, such as does not require speedy transportation?

Answer. No, sir; all classes are more or less competitive. Nine-tenths of the shipments of shoes, first class freight, go by rail and water on account of the difference in rates. There are certain classes of freights that cannot be handled by rail and water and consequently has to bear a higher rate, as machinery and something of that kind.

Cross-Int. 31. Is the percentage of traffic carried by the all rail lines from Baltimore, Philadelphia and New York to Atlanta large or small in comparison with that carried by the water and rail lines?

Ans. I cannot answer that question. I have no data on hand to give me that information.

Cross-Int. 32. Are Hogansville, Palmetto and Fairburn on any other road than the Atlanta and West Point Railroad?

Answer. No, sir.

Cross-Int. 33. When goods are hauled from New Orleans via Montgomery to LaGrange is there any transfer between New Orleans and Montgomery on car loads?

Answer. No.

Cross-Int. 34. Is there on less than car loads?

Ans. Yes, several.

392 Cross-Int. 35. When goods are hauled from New Orleans via Montgomery to LaGrange, is there any transfer between Montgomery and LaGrange?

Answer. Yes.

Cross-Int. 36. Where is that transfer?

Answer. Usually at Opelika, as the goods would be loaded in what we call a "way car," and that car is transferred at Opelika.

Cross-Int. 37. At what point is the transfer made between New Orleans and Montgomery?

Answer. It would depend entirely on how the car was loaded.

Cross-Int. 38. When goods are hauled in carloads from New Orleans to LaGrange, is there any transfer except at Montgomery?

Answer. No, sir.

Cross-Int. 39. When goods are hauled from New Orleans via Montgomery to LaGrange, is the expense of transfer at Montgomery any greater than when such goods are hauled to Atlanta?

A. No.

Cross-Int. 40. When goods are hauled in carloads from New Orleans to LaGrange are they not hauled in the same car all the way?

Answer. They would ordinarily, unless there was some reason which would make it necessary to transfer the car. Ordinarily they would go through.

Cross-Int. 41. Is there more expense to transfer a car at Montgomery to the track of the Western Railway of Alabama when goods are shipped to LaGrange, than when shipped to Atlanta?

Answer. No, sir. There is no difference in the cost of moving a car from a point on the Louisville & Nashville Railroad to points on the Western Railway of Alabama.

Cross-Int. 42. In cases of carload shipments, is the expense of transfer on shipments to LaGrange greater than on shipments to Atlanta?

Witness: Transfer of what?

Counsel: Transfer to Montgomery.

Answer. There would be no difference unless there
393 was a transfer.

Cross-Int. 43. When goods are shipped in less than carloads from New Orleans via Montgomery to LaGrange, is the expense of transfer any greater than on such shipments in less than carloads to Atlanta?

Answer. Yes, for the reason that the shipments would necessarily be rehandled between Montgomery and LaGrange. On the contrary Atlanta shipments would not be rehandled between Montgomery and Atlanta.

Cross-Int. 44. Why is that rehandling necessary in case of shipments to LaGrange, and not necessary in case of shipments to Atlanta?

Answer. For the reason that we seldom have sufficient freight to load a car solid to LaGrange.

Cross-Int. 45. My question related to less than carloads in both instances; less than carloads to LaGrange, and less than carloads to Atlanta.

Answer. Well, to LaGrange we seldom have more than a very little car, while to Atlanta we always have enough mixed freight to load a car solid.

Cross-Int. 46. That would be a case of carload shipments to Atlanta?

Answer. Yes, we make up a carload to Atlanta.

Cross-Int. 47. My question is in the event a less than carload shipment is made to Atlanta, is the expense of transfers any less than on such shipments to LaGrange?

Answer. I can hardly answer that for the simple reason that we seldom have less than carload shipments to Atlanta.

Cross-Int. 48. Suppose there should be?

Answer. There would be no difference.

Cross-Int. 49. When goods are shipped from Montgomery to LaGrange, is not the rate made up of the rate from
394 Montgomery to Opelika, plus the rate from Opelika to West Point plus the rate from West Point to LaGrange?

Answer. No, sir.

Cross-Int. 50. How is the rate made up?

Answer. The local to West Point and the local to Atlanta and West Point added.

Cross-Int. 51. It is the sum of the two locals?

Answer. Yes, sir.

Cross-Int. 52. Is not the expense of strictly local hauls greater in proportion to distance than on other hauls?

Answer. Yes.

Cross-Int. 53. Is not therefore a rate made for a strictly local haul greater in proportion to distance than the through rate?

Answer. That is not altogether the reason. It is one of the reasons.

Cross-Int. 54. What is the other reason?

Answer. Competition of markets and railroads; competition of markets and carriers.

Cross-Int. 55. Is not each local rate intended to cover the cost of two terminals?

Answer. I think so.

Cross-Int. 55½. Is not the local rate from Montgomery to West Point intended to cover the terminal expense at Montgomery and at West Point?

Answer. Partially.

Cross-Int. 56. I mean on a shipment originating at Montgomery and terminating at West Point, is not the local intended to cover the cost of the two terminals?

Answer. The partial cost.

Cross-Int. 57. You mean it is intended to cover the cost of two terminals and every cost besides?

Answer. It would be very hard to give a direct answer on

that, because there is so much freight from so many different places and ending at different points, so that you could not say it covered the exact cost.

Cross-Int. 58. All that is taken in consideration in fixing the local rate?

Ans. Yes, sir.

Cross-Int. 59. Is not the local rate on a shipment originating at West Point and terminating at LaGrange intended to cover the cost of two terminals as well as transportation?

Ans. Partially so, as I have already answered.

395 Cross-Int. 60. Is not the general rule as to through rates that while the entire through rate increases as the length of the haul increases, the rate per ton per mile grows less as the distance increases?

Ans. Yes, sir.

Cross-Int. 61. In your cross-examination before the Interstate Commerce Commission you state: "We cannot charge more to Palmetto than the combination on Atlanta, as shippers would simply ship to Atlanta and ship right back. That is frequently done." Why could you not make such a rate? Is it because in that event the road would have rendered the service of the through shipments to Atlanta plus the local back?

Ans. It would simply mean this: The through rate was more from a given point—say New Orleans to Atlanta—than the Atlanta rate plus the local back; shippers would ship to Atlanta, consign their shipment to Atlanta, re-consign them Atlanta to destination, on local tariff rate applying from Atlanta to such destination.

Cross-Int. 62. In that event would not the road get the benefit of the two hauls—one the through haul and one the local haul?

Answer. Yes, provided the same road handled the shipment to Atlanta, then from Atlanta to its final destination.

Cross-Int. 63. When goods from New Orleans are put off at LaGrange the road gets the through rate to Atlanta plus the local rate back to LaGrange without, in fact, rendering the service of hauling the goods to Atlanta and then back to LaGrange, does it not?

Answer. In some cases, yes.

Cross-Int. 64. Is the traffic of the Western Railway of Alabama and the Atlanta & West Point Railroad and upon which competitive rates are charged greater or less in amount than the strictly local traffic of said roads upon which local rates are charged?

Answer. Without having statistics at hand, I would say that the through traffic is greater in amount in volume than the local.

396 Cross-Int. 65. Can you give us an idea of the proportion of through competitive traffic to the local traffic?

Ans. No, sir.

Cross-Int. 66. Do the rates from New Orleans to Atlanta pay the cost of the movement of traffic to Atlanta and other fixed charges and reasonable dividends?

Answer. I cannot answer the question as to the dividends. In most cases the revenue derived is sufficient to cover the cost of transportation and terminal charges.

Cross-Int. 67. Would the rates for the haul from New Orleans to Atlanta and Atlanta to LaGrange pay the cost of the movement to LaGrange and also fixed charges, such as interest on bonds and dividends?

Answer. No, sir; I don't know that it would.

Cross-Int. 68. Do the rates from New Orleans to Hogansville, Newnan, Palmetto and Fairburn pay cost of movement to these points and also fixed charges and reasonable dividends?

Answer. As to dividends, I cannot answer.

Cross-Int. 69. Would the rates to Hogansville, Newnan, Palmetto and Fairburn, if applied to LaGrange, pay the cost of movement to LaGrange and also fixed charges and reasonable dividends?

Ans. No, sir.

Cross-Int. 70. Do the rates from New Orleans to LaGrange pay cost of movement and also fixed charges and reasonable dividends?

Answer. Yes, sir; it pays cost of fixed charges. I cannot answer as to dividends.

Cross-Int. 71. Do the rates from New Orleans to Opelika pay cost of movement to Opelika and also fixed charges and reasonable dividends?

Answer. Yes, it pays cost of movement to Opelika and fixed charges. I cannot answer as to dividends.

397 Cross-Int. 72. The distance from Opelika to Atlanta is 109 miles, is it not?

Answer. Yes, sir.

Cross-Int. 73. Are not the rates from New Orleans to Opelika the same as rates from New Orleans for the haul through Opelika on to Atlanta?

Answer. On classes 1, 2, 3, 4, 5, 6 and A; yes. On other classes and commodities slightly higher than to Atlanta.

Cross-Int. 74. How are rates from New Orleans to Opelika made? Are they based on Opelika to Montgomery? Are they made up of rate from New Orleans to Montgomery plus the local rate from Montgomery to Opelika?

Answer. No, sir.

Cross-Int. 75. Excluding all opinions of competition and viewing the question abstractly, can a rate be said to be reasonable in and of itself which does not pay the cost of movement of the traffic to which it is applied, and also its proportion of fixed charges and reasonable dividends?

Answer. No, sir.

Cross-Int. 76. Does not the cost of movement, or the expense of actual service of transportation depend largely, or to some extent, on the length of the haul, other things being equal?

Ans. Yes, other things being equal.

Cross-Int. 77. In other words, other things except distance being equal, will it not cost more to haul traffic 100 miles than 50 miles?

Answer. Yes, it will. Of course, that would depend a great deal on the character of the traffic. It would cost less if it were on what we call through traffic handled solid in every direction, than on local traffic.

Cross-Int. 78. Isn't the line from New Orleans to Atlanta involved in this case the only line from any point of the compass to Atlanta that charges to intermediate shorter distance points a rate made up of the through rate to Atlanta plus the local back?

If not, what other lines leading into Atlanta make
398 rates to shorter distance points in that way?

Answer. I cannot answer that question without having it looked into.

Cross-Int. 79. Will you please investigate and give your answer to the stenographer?

Answer. Yes, sir.

Note: After investigation the witness gave the following answer to Cross-Int. 78: No, sir; there are others—the Georgia Railroad, the Southern Railway and the Western and Atlantic Railway.

Cross-Int. 80. All the lines into Atlanta from all directions have agents or solicitors of Atlanta business, have they not, in competition with each other?

Answer. Yes, sir.

Cross-Int. 81. Do not these agents also solicit business for LaGrange?

Answer. Well, yes.

Cross-Int. 82. On traffic from eastern cities, New York, Philadelphia, Boston, Baltimore, does not Macon take a lower rate that Atlanta?

Answer. Yes, sir.

Re-Direct Examination.

Int. 1. How often is Poor's Manual published?

Answer. Once a year.

Int. 2. Please state whether or not it is a recognized authority among railroad men, bankers, brokers and investors in the United States, as to the description and history of railroads, their equipment, operations and financial conditions.

Answer. It is.

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399 DEPOSITION OF P. J. McGOVERN.

P. J. McGOVERN, sworn, testified:

Direct Examination by Judge Baxter.

Int. 1. State your name, age, residence and occupation.

Answer. P. J. McGovern, age 42 years, residence Atlanta, Georgia, occupation chairman Southern Classification Committee.

Int. 2. How long have you been connected with the railroad traffic departments in the United States, and in what capacities, and state whether or not the nature of your business has related to the manner of making railroad freight rates in southern territory.

Answer. I have been connected with the traffic departments of several southern railways and southern freight traffic associations for upwards of seventeen years, and my duties have required me to familiarize myself with the construction of freight rates in the Southern States; that is to say, in the territory south of the Ohio and Potomac rivers and east of the Mississippi river.

Int. 3. The rates from New Orleans to LaGrange, Georgia, via Louisville & Nashville Railroad, Western of Alabama Railway and Atlanta & West Point Railroad are as follows in cents per hundred pounds and on Class F per barrel:

1	2	3	4	5	6
143	124	109	93	74	59

A	B	C	D	E	H	F
41	48	33½	29	66	74	59

State whether or not said rates are, in your opinion, unreasonably high or reasonably low, and state your reasons for any opinion you may express.

Answer. I believe that these rates are reasonably low. They are based on the lowest combination of the competitive rates to Atlanta or Montgomery, added to what I believe to be
400 reasonably low rates from Atlanta or Montgomery. As a matter of fact, with the exception of Class H, these rates are made on the Atlanta combination. To put it differently, the rate on each class is based on what I believe to be a combination of reasonable rates, and therefore I believe the total through rate to be reasonable, or reasonably low.

Int. 4. Do you know whether or not traffic has heretofore moved from New Orleans to LaGrange on these rates?

Answer. No, actually I do not know that I have ever seen any statistics that I recall.

Int. 5. The rates from Atlanta to LaGrange are as follows in cents per hundred pounds and on Class F, per barrel:

1	2	3	4	5	6
40	36	32	29	22	17

A	B	C	D	E	H	F
17	17	9½	9	22	29	19

State whether, in your opinion, said rates are unreasonably high or reasonably low, and state your reasons for any opinion you may express.

Answer. I believe these rates to be reasonably low. They are, as a matter of fact, the rates authorized by the Railroad Commission of Georgia for the distance hauled. They are in line, therefore, with the rates from Atlanta to other stations lying along the Atlanta & West Point Railroad, and they are in line with the rates which the Railroad Commission of Georgia permits or authorizes other roads in Georgia to charge for like distances.

Int. 6. Suppose the rates from New Orleans to LaGrange on the different classes were reduced by the following amounts in cents per hundred pounds and on Class F per barrel:
401

1	2	3	4	5	6
40	36	32	29	22	17

A	B	C	D	E	H	F
17	17	9½	9	22	25	19

What effect, if any, would it have, in your opinion, towards increasing the tonnage or revenue of the Louisville & Nashville Railroad, Western Railway of Alabama and Atlanta & West Point Railroad on traffic from New Orleans to LaGrange?

Answer. I don't believe that it would appreciably increase the tonnage, and evidently, therefore, it would materially reduce the revenue on these lines. I don't believe that even the material reduction of rates from New Orleans to LaGrange would, as already stated, appreciably increase the business of LaGrange. I believe that in practice and in fact it would simply whittle down the revenues of the lines carrying the business; that is would not perceptibly, and certainly not materially increase the growth or business of the place, and that it would simply mean a disastrous reduction to the lines carrying the business.

Cross-Examination by Mr. Shaver.

Cross-Int. 1. You stated that the rates from New Orleans to LaGrange, except Class H, are based on the Atlanta rates, Class H excepted. The rate on each class is made on the lowest combination, and it so happens that the Class H rate is made on the Montgomery combination. In other words, the Montgomery combination is lower than the Atlanta combination or any other combination of that particular class. What is the rate from New Orleans to Montgomery on Class H, and the rate from Montgomery to LaGrange, if you know?

Answer. New Orleans to Montgomery, 29; Montgomery to West Point, 32, as I remember it; West Point to La-
402 Grange, 13. I think those are the figures.

Cross-Int. 2. What is the rate from New Orleans to Atlanta on Class H?

Answer. 49 cents.

Cross-Int. 3. And the rate back from Atlanta to LaGrange?

Answer. 29 cents.

Cross-Int. 4. Is there any reason why the combination on Class H, Montgomery to LaGrange from New Orleans, should be lower than the combination New Orleans to Atlanta? Is there any reason in the nature of the traffic covered by Class H?

Answer. The reason is that the rates from New Orleans from Ohio river points and from Memphis, etc., to Montgomery are largely affected by water competition; as to this Class H rate from New Orleans to Montgomery, I do not at the moment

distinctly recall just how it was arrived at, but my impression is that it was adjusted so as to prevent that particular commodity (Class H being whiskey, wines, etc., in barrels) from being shipped to Mobile at the current rates, and then shipped by river to Montgomery. Apart from this, I do not know of any special reason, inherent in the nature or character of the business at Montgomery and Atlanta, respectively, which would necessarily make the rate from Atlanta to Montgomery very much lower than to Atlanta.

Cross-Int. 5. Atlanta is not on any river at all, is it?

Answer. No, sir; not on any navigable river.

Cross-Int. 6. The competition by Alabama river on shipments from New Orleans to Montgomery is very strong, is it not?

Answer. It has been strong enough, as previously stated, to force down many of the rates. This is especially true of heavy commodities, such as packing house products, grain, hay and grain products.

403 Cross-Int. 7. Would not that competition affect the rates on shipments of sugar, molasses and rice to Montgomery?

Answer. Why, I should say that it ought to affect these rates.

Cross-Int. 8. Would it not affect the shipments of sugar and molasses, and especially articles of Class H, which is whiskey in barrels?

Answer. Yes, of course the roads endeavor to adjust the rates on each commodity so as to affect the conditions, and I do not know of any reason why such commodities as sugar and molasses ought not to be greatly affected by water competition in such cases.

Cross-Int. 9. You stated as a reason for your opinion that the rates from Atlanta to New Orleans are not unreasonably high, that they are a combination of two reasonably low rates, the one being the through rate from New Orleans to Atlanta, and the other being the local rate for the seventy-one miles haul back from Atlanta to LaGrange. When you speak of the rate for the haul from Atlanta to LaGrange (71 miles) as reasonable, do you mean it is reasonable for that local haul of 71 miles?

Answer. Yes. I mean that it is a reasonable charge for the service performed under the circumstances and conditions attending its performance. It is a local haul for a certain distance and the Georgia Railroad Commission has published and authorized these rates as being reasonable for the services performed.

Cross-Int. 10. These local rates established by the Georgia Railroad Commission for the haul of 71 miles from Atlanta to

Lagrange were established to be applied to shipments originating in Atlanta and terminating at LaGrange, were they not?

Answer. Yes, sir.

Cross-Int. 11. Is not every local rate intended to cover expense of two terminals?

Answer. Yes, sir. I would understand that kind of a rate to include the cost of terminal services, and in fact
404 other services connected with the transportation of that particular business which the carriers would be called on to perform.

Cross-Int. 12. These local rates were intended to cover actual hauls, and not merely constructive hauls, were they not?

Answer. Yes, sir.

Cross-Int. 13. Are not local hauls much more expensive in proportion to distance than other hauls?

Answer. Undoubtedly, they are more expensive as a rule. I believe that fact to be generally recognized by railroad people.

Cross-Int. 14. Are not local rates made for strictly local hauls, therefore much higher in proportion to distance than other rates?

Answer. If by other rates you mean competitive through rates, I would say that they might be, or might not be higher. The local distance rates on a given road might be higher or they might be lower than the through rates over some other road or roads. I will say, however, that local rates are understood to be maximum rates, whereas through rates or competitive through rates are adjusted so as to favor the conditions surrounding the traffic.

Cross-Int. 15. You have stated that local hauls are much more expensive than through hauls; would it not follow that local rates would be made higher than through rates in proportion to distance, in order to cover this extra expense of local hauls?

Answer. From any part of the line, I would say yes. The local rates reach maximum rates for the distance hauled; and it may be true, and in fact it is true that in many or most cases the revenue derived from a competitive haul over that same line would pay less per mile than the local rate.

Cross-Int. 16. Is it not a general rule that while the local or any rate increases as the length of the haul increases
405 the rate per ton per mile decreases as the distance increases?

Answer. Where the rates over any part of the line are based on distance, it is practically the invariable rule that the rate increases with the distance, but not in the same ratio; and that therefore as the distance and rate increase, the rate per mile

decreases, but there is a most important exception to this general rule; in the entire territory north of the Ohio River and east of the Mississippi River, constituting what I am sure is the heaviest traffic section in the United States, the rates are all made practically on a percentage of the New York and Chicago rate; and to points like Cincinnati, Ohio, for example, it is the same rate per mile to New York as to Chicago or East St. Louis, notwithstanding that the distance from Cincinnati to New York is less than from either Chicago or East St. Louis. I have never believed that this manner of making rates in that section was exactly correct, but it is there and I have no doubt that those who are responsible know much more of the traffic conditions than I pretend to know. I simply state it as a most important exception to the general rule as to making rates on a distance basis.

Cross Int. 17. Does that result in higher rates to Cincinnati than to longer distance points?

Answer. No, sir; it results in a lower rate, as I endeavored to explain in my previous answer. It results in the same rate per mile from Cincinnati to New York as from Chicago to New York, although the distance from Cincinnati is less than from Chicago.

Cross Int. 18. You say that the rates in that territory east of the Mississippi and north of the Ohio river (called the "Trunk Line Territory") are based on the New York and Chicago rate, and are percentages of that rate; that is to say for example, that the distance from Chicago to Indianapolis is 90 per cent. of the distance from New York to Chicago, is the Indianapolis rate 90 per cent. of the New York and Chicago rate?

406 Answer. Exactly, sir.

Cross Int. 19. That trunk line system of rate making then, does not result in higher rates to shorter than to longer distance points, does it?

Answer. If you refer to the published tariff I would say no; but I think it is notorious that while theoretically there is an effort to base all these rates on distance, it is a fact that for several years past and until the first of last January the rates at the small local points were maintained, while the rates of the larger points were not. I do not pretend to say that I can prove this, but I think it is well understood among traffic people at all familiar with that territory. However, as I say the published tariffs do not show, as far as I recall, higher rates for shorter distances in that territory than for longer distances.

Cross Int. 20. The rates from the eastern seaboard, New York, Philadelphia, etc., to points west of the Mississippi are

the rates to the Mississippi plus the rates from the Mississippi on, are they not?

Answer. I believe the rates are usually made in that manner, although I have the impression that it takes usually proportional rates to the Mississippi crossings, applicable on traffic for points west thereof.

Cross-Int. 21. The rates charged by the Atlanta & West Point Railroad from Atlanta back to LaGrange, a distance of 71 miles, are the standard distance rates established by the Georgia Railroad Commission plus 10 per cent., are they not?

Answer. That is true as to all classes except C, D, F, J, and P, upon which classes no percentage addition is allowed.

At this point a recess of one hour and a half was taken.

407 DEPOSITION OF W. F. VANDIVER.

W. K. VANDIVER, sworn, testified:

Direct Examination by Judge Baxter.

Interrogatory 1. State your name, age, residence and occupation?

Answer. William K. Vandiver, age 31 years, residence Atlanta, Ga., present occupation chief rate clerk Southeastern Freight Association.

Int. 2. How long have you been connected with the traffic departments in the United States, and in what capacities, and state whether or not the nature of your duties has related to the making of railroad freight rates in the southern territory?

Answer. I have been connected with the railroad business for almost eleven years; for eight and a half years in the general freight office of the Louisville & Nashville, occupying various positions up to assistant chief clerk when I left there. Since then I have been chief rate clerk for the Southeastern Association and its predecessors. In almost all of them my duties have related to the making of freight rates in the Southeastern territory.

Int. 3. The rates from New Orleans to LaGrange, via Louisville & Nashville Railroad, Western of Alabama Railway and Atlanta & West Point Railroad are as follows in cents per hundred pounds, and on Class F in barrels:

1	2	3	4	5	6
143	124	109	93	74	59

A	B	C	D	E	H	F
41	48	33.5	29	66	74	59

State whether or not said rates are in your opinion unreasonably high or reasonably low, and state your reasons for any opinion you may express.

Answer. In my opinion these rates are reasonably low. They do not allow the carriers excessive revenue for the
408 service performed. They compare favorably with rates for similar distance and to points similarly located. They do not exceed the competitive rates to Atlanta, Montgomery, Opelika, etc., plus the local of the Atlanta & West Point Railroad, which I might say in this connection are not to my mind unreasonable. Furthermore, the rates from New Orleans to LaGrange, Georgia, are in line with rates from Memphis, Ohio river points, eastern cities, etc., in that the rates from all of these competitive points are made on the combination basis.

Int. 5. The rates from Atlanta to LaGrange are as follows in cents per hundred pounds and on Class F, per barrel:

1	2	3	4	5	6
40	36	32	29	22	17

A	B	C	D	E	H	F
17	17	9½	9	22	29	19

State whether in your opinion said rates are unreasonably high or reasonably low, and state your reason for any opinion you may express?

Answer. I consider these rates reasonably low because they are in line with rates on other business similarly located, and on which the conditions are the same. They are also the rates prescribed by the Georgia Railroad Commission as being reasonable rates for the services performed.

Int. 6. Suppose the rates from New Orleans to LaGrange on the different classes were reduced by the following amounts in cents per hundred pounds and on Class F per barrel:

1	2	3	4	5	6
40	36	32	29	22	17

A	B	C	D	E	H	F
17	17	9½	9	22	25	19

409 What effect, if any in your opinion would it have toward insreasing the tonnage on the Louisville & Nashville Railroad, Western of Alabama Railway, and At-

lanta & West Point Railroad on traffic from New Orleans to LaGrange.

Answer. I don't think this reduction would perceptibly increase the tonnage. As regards the revenue the Louisville & Nashville Railroad would scarcely be affected in either event, but the loss to the Atlanta & West Point Railroad would be very serious.

Int. 7. Can you state the price of rice per hundred pounds, molasses per gallon and sugar per pound in the retail stores of Atlanta to-day.

Answer. I cannot give you the exact price at the retail stores, I can give you the prices at wholesale stores. The prices quoted f. o. b. Atlanta to-day are, on rice from 4 to 7½ cents per pound, depending on the grade. The price on the quality which is sold to the country trade is 5½ and 6 cents per pound. On molasses the price varies from 10 to 30 cents per gallon. On the kind that is usually sold to the country trade the price is about 20 cents. One firm say that they sold more goods at 15 cents than any other kind; but another, a larger one, say that 20 and 21 cents is the price they get. On sugar, the price for granulated is 5.68 cents; common clarified sugar is worth about 5¼, and I am informed that when there is a difference of ¾ of a cent granulated sugar will be sold almost altogether. There is very little trade at present in the common ordinary coarse sugar for the reason that the price is so close.

Int. 8. How many pounds are there in a gallon of molasses?

Answer. A barrel of molasses is estimated at 600 pounds, each barrel containing 50 gallons, which would make the average weight per gallon 12 pounds.

410 Cross-Examination by Mr. Shaver.

Cross-Interrogatory 1. You are not engaged in the business of selling sugar, molasses and rice, are you?

Ans. No, sir.

Cross Int. 2. This information you have just given was gathered by you from merchants and others in this business, I suppose?

Answer. Yes, Sir.

Cross-Int. 3. You state that you are chief rate clerk of the Southeastern Freight Association and that your duties relate almost exclusively to freight rates in the Southeastern territory; what is the Southeastern territory?

Answer. Well by that I mean the territory within which the rates are subject to the so-called Southern Freight Classi-

fication. In general way it is the territory south of the Potomac and Ohio rivers and east of the Mississippi River. I use that term southeastern in contra-distinction with the Canadian California, etc.

Cross-Int. 4. You say it is east of the Mississippi and south of the Potomac rivers?

Answer. Yes sir.

Cross-Int. 5. You stated that your duties as chief rate clerk of the Southeastern Freight Association relate to the making of rates in this southeastern territory; what does the association have to do with these rates?

Answer. We promulgate the rates for the benefit of the individual lines, as the representative of such lines. We file these rates with the Interstate Commerce Commission, then we furnish a sufficient number to the members of the Association for their information and use.

Cross-Int. 6. Of what association is the Southeastern the successor.

Answer. The Southern States Freight Association.

Cross-Int. 7. When did it cease to exist?

411 Answer. April 30, 1897.

Cross-Int. 8. Of what association was the Southern States Freight Association the successor?

Ans. The Southern Railway and Steamship Association.

Cross-Int. 9. Either of these associations had what they call jurisdiction of the competitive rates of the Southeastern territory.

Answer. Yes.

Cross-Int. 10. When did the Southern Railway and Steamship Association cease to exist?

Answer. I don't remember the exact date, but believe it was sometime during October, 1895, October 12th, probably. I can verify that by reference to records.

Cross-Int. 11. The two other Associations covered the same territory, or the southeastern territory, and the functions of all three were practically the same, were they not?

Answer. Yes, except that the predecessors of the Southeastern Freight Association had authority to fix rates; that is, I mean these Commissioners had the right of the association. The chairman, however, does not at his own motion or on request of any line establish any rates.

Cross-Int. 12. How are the rates fixed?

Answer. They are fixed by members at a meeting. They ask consent to establish certain figures, and the other members announce whether they will participate in those cases.

Cross-Int. 13. And the rates are agreed upon at said meeting?

Answer. Well, it can hardly be said that they are agreed upon. They are announced by one line, but if others desire to participate in these rates they have the privilege of making a similar announcement at that time.

412 Cross-Int. 14. Are the rates from New Orleans to Atlanta rates that they announced at such a meeting of the members of the Southeastern Freight Association?

Answer. The present rates from New Orleans to Atlanta have been in effect a number of years, and were in existence a number of years prior to the establishment of the Southeastern Freight Association.

Cros-Int. 15. Were they established during the existence of the Southern States Freight Association?

Answer. They were on the classes and most of the commodities.

Cross-Int. 16. That Association exercised the authority of establishing rates, did it not?

Answer. Yes.

Cross-Int. 17. You gave it as your opinion that the rates from Atlanta to LaGrange which are charged as parts of the through rates from New Orleans to LaGrange were reasonably low; you stated amongst other reasons that those were the rates fixed by the Georgia Railroad Commission for that Distance, viz: 71 miles; are not the rates fixed by the Georgia Railroad Commission intended to apply to local hauls in the State of Georgia?

Answer. Yes, sir; they are.

Cross-Int. 18. When you stated that the rates from Atlanta to LaGrange are reasonably low, do you mean that they were reasonably low for that local haul from Atlanta to LaGrange?

Answer. Well, either the local haul, or a haul in connection with shipments from other points.

Cross-Int. 19. When the Georgia Railroad Commission established these rates from Atlanta to LaGrange, did it or not contemplate a shipment originating at Atlanta and terminating at LaGrange?

Answer. I presume they did.

Adjourned sine die. WM. C. MASSEY,

[Seal] Notary Public. Acting Special Examiner.

(Indorsed:) Depositions of T. J. Hunter, et al., from Wm. C. Massey, Commissioner. Received and filed this June 2nd, A. D. 1899, and published this the 19th day of June, A. D. 1899, by agreement on file, Richard Jones, Clerk.

413 DEPOSITION OF T. S. DEVANT.

In the Circuit Court of the United States for the Southern District of Alabama.

The Interstate Commerce Commission
vs. In Equity No. 207.
Louisville & Nashville Railroad Company, Western Railway of Alabama and Atlanta & West Point Railroad Company.

Direct Interrogatories and Answers.

Interrogatories in the above entitled cause, on behalf of the defendants herein, propounded to T. S. Devant, of Roanoke, Va.

Answers to direct interrogatories in the above entitled cause, on behalf of the defendants therein, by T. S. DEVANT, of Roanoke, Va., he having been duly sworn before the undersigned Notary Public.

Q. 1. State your name, age, residence and occupation.

Answer. T. S. Devant; 49 years; Roanoke, Va.; General Freight Agent, Norfolk & Western Railway Company.

Q. 2. How long have you been connected with the railroad traffic department in the United States and in what capacities, and state whether or not the nature of your duties have related to the matter of making railroad rates in southern territory.

Ans. I entered the railroad service in 1865, and have been in the business for about thirty-four years. I have had direct supervision and control of railroad traffic since 1874, and most of this time I have been intimately connected with the making of rates in southern territory.

Q. 3. The rates from New Orleans to LaGrange, Ga., via the Louisville & Nashville R. R., Western Railway of Alabama and Atlanta & West Point R. R., are as follows, in cents per hundred pounds, and on class F, per barrel:

1	2	3	4	5	6	A	B	C	D	E	H	F
143	124	109	93	74	59	41	48	33.5	29	66	74	59

State whether or not said rates are, in your opinion, unreasonably high, or reasonably low, and state your reasons
414 for any opinion you may express.

Ans. I think the rates are reasonably low for the following reasons, viz:

First. They are made up of two sets of rates, namely: the rates from New Orleans to Atlanta, which are lower than they would be but for competition of controling force at Atlanta, and

the low rates from Atlanta to LaGrange, made by the Railroad Commission of the State of Georgia.

Second. They are made with due regard to the rates from South Atlantic ports and eastern and western points.

Third. They are in line with rates from New Orleans to similarly located points.

Q. 4. The rates from Atlanta to LaGrange are as follows in cents per hundred pounds, and on class F per barrel:

1	2	3	4	5	6	A	B	C	D	E	H	F
40	36	32	29	22	17	17	17	9.5	9	22	29	19

State whether in your opinion said rates are unreasonably high, or reasonably low; and state your reasons for any opinion you may express.

Ans. The rates are made by the Railroad Commission of Georgia, and I consider them reasonably low, because they are lower than can be obtained by any other means of transportation, and also because they are lower than rates which are authorized by like constituted authority in the States of Alabama, Florida, South Carolina, etc., for corresponding distances.

For instance, the following are the local mileage rates for a distance of 71 miles applicable in the States indicated, viz:

Alabama.

1	2	3	4	5	6	A	B	C	D	E	H	F
55	48	44	40	37	25	22	22	20	17	37	40	40

So. Ry. Local Frt. Tariff 1047 WS ICC 233.

Florida.

1	2	3	4	5	6	A	B	C	D	E	H	F
58	50	46	36	34	29	25	19	19	15	33	42	30

Plant Ry. Local Frt. Tariff No. 1.

Louisiana.

1	2	3	4	5	6	A	B	C	D	E	H	F
						CL	CL	CL	CL			CL
56	45	37	31	26	23	21	23	19	16	26	37	36
						LCL	LCL	LCL	LCL			LCL
						26	28	24	20			45

Ill. Central Local Distance Tariff M-741 ICC B-316.

Mississippi.

1	2	3	4	5	6	A	B	C	D	E	H	F
55	48	44	40	37	25	22	22	20	17	37	40	40

So. Ry. Local Frt. Tariff 1047 W. S. ICC 233.

South Carolina.

1	2	3	4	5	6	A	B	C	D	E	H	F
50	45	35	32	24	21	15½	20½	15	13½	24	32	30

So. Ry. South Carolina Local Tariff No. 2 ICC No. 2263.

415 Q. 5. Suppose the rates from New Orleans to LaGrange on the different classes were reduced by the following amounts in cents per hundred pounds, and on class F in cents per barrel:

1	2	3	4	5	6	A	B	C	D	E	H	F
40	36	32	29	22	17	17	17	9.5	9	22	29	19

What effect, if any, would it have towards increasing the tonnage and revenue of the L. & N. R. R., Western Railway of Alabama, and Atlanta & West Point R. R., on traffic from New Orleans to LaGrange?

Ans. I do not think the reduction in rates would have the effect of increasing the tonnage and revenue of the roads named, for the reason that corresponding reductions would likely be made from Savannah, Ga., Charleston, S. C., and other points which now compete with New Orleans, and in this way the relative division of trade would be maintained; besides, as the volume of business into LaGrange is regulated by the law of supply and demand, it would not be enlarged to any appreciable extent by lower railroad rates. T. S. DEVANT.

City of Roanoke,
State of Virginia.

Sworn and subscribed to before me this 7th day of June, 1899.
[Notarial Seal] LAWRENCE S. DAVIS, Notary Public.

Cross-Interrogatories and Answers.

Cross-Interrogatories in the above entitled cause, on behalf of the complainant therein, propounded to T. S. Devant, of Roanoke, Va.

Answers to cross-interrogatories in the above entitled cause, on behalf of the complainant therein, by T. S. Devant, of Roanoke, Va., he having been duly sworn before the undersigned Notary Public.

Q. 1. How long, or about how long, has the system of rates now in force to Atlanta, from Baltimore, Philadelphia, New York and Boston, and from Cincinnati and other Ohio river points and from Memphis and New Orleans existed, and state whether the rates under that system have been substantially the same during that time?

Ans. The present system of rates to Atlanta from Baltimore, Philadelphia, New York and Boston and from
416 Cincinnati and other Ohio river points and from Memphis and New Orleans has existed for fifteen years or more, and the rates have been substantially the same during that time.

Q. 2. How long have the rates from New Orleans and the other points named in the preceding interrogatory to Atlanta been substantially the same as they now are?

Ans. I cannot state positively how long the rates have been substantially the same as now, but this has been the case for a great many years.

Q. 3. In the absence of competition, would the carriers charge higher than reasonably high rates from New Orleans to Atlanta?

Ans. No, sir.

Q. 4. Has competition caused the rates to Atlanta from New Orleans to be made lower than the carriers might otherwise reasonably charge?

Ans. Yes, sir.

Q. 5. Has competition at Atlanta caused the rates from New Orleans to LaGrange to be made higher than would otherwise have been charged?

Ans. No, sir; but on the contrary, the competition at Atlanta has caused the rates from New Orleans to LaGrange to be made lower than would otherwise be charged.

Q. 6. In the absence of competition in transportation to Atlanta would the rates from New Orleans to LaGrange have been made the sum of the through rate from New Orleans through LaGrange to Atlanta plus the local rate from Atlanta back to LaGrange?

Ans. Yes; unless a lower combination could be made on Montgomery, or some other point.

Q. 7. Is the rate from New Orleans to Atlanta based on any other rate, and if so, on what rate? What line of roads first put in force the present rate from New Orleans to Atlanta?

Ans. The rates from New Orleans to Atlanta are made with due regard to the rates from other important points
417 to Atlanta, such as Savannah, Ga., Charleston, S. C., Baltimore, Md., Cincinnati, O., etc., so as to enable New Orleans merchants and manufacturers to compete at that point. I think the defendant roads first put in the present rates from New Orleans to Atlanta.

Q. 8. What is the distance from Opelika to LaGrange?

Ans. 88 miles.

Q. 9. Would the giving to shorter distance local stations

surrounding Atlanta, rates not higher than the rates for the longer hauls through those stations to Atlanta, increase or diminish the business of Atlanta merchants?

Ans. Not in my opinion, to any large extent for the reason that the merchants at such local stations generally find it more convenient to purchase their goods in Atlanta and would continue to do so even though the rates to their stations were made no higher than for the longer haul to Atlanta through such stations.

Q. 10. If in answer to the preceding interrogatory, you say Atlanta business would be diminished, would that result in a decrease of the tonnage of traffic hauled by the carriers to Atlanta?

Ans. Of course, to the extent that such adjustment of rates would diminish the business of Atlanta, the tonnage of traffic hauled by the carriers to Atlanta would be decreased.

T. S. DEVANT.

City of Roanoke,
State of Virginia.

Sworn and subscribed to before me this 7th day of June, 1899.

[Notarial Seal] LAWRENCE S. DAVIS, Notary Public.

Filed June 10, 1899, and published June 19, 1899, by agreement on file. RICH'D. JONES, Clerk.

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418 DEPOSITION OF J. M. CULP.

In the Circuit Court of the United States for the Southern District of Alabama.

The Interstate Commerce Commission
vs. In Equity No. 207.
Louisville & Nashville Railroad Company, Western Railway of Alabama and Atlanta & West Point Railroad Company.

Answers to interrogatories in the above entitled cause by J. M. Culp, of Washington, D. C.

Int. No. 1. State your name, age, residence and occupation.

Ans. J. M. Culp, 50 years last birthday; Washington, D. C., Traffic Manager of the Southern Railway.

Int. No. 2. How long have you been connected with the railroad traffic department in the United States, and in what

capacities, and state whether or not the nature of your duties has related to the matter of making railroad freight rates in southern territory.

Ans. With the L. & N. 21 years. I was clerk, chief clerk, assistant general freight agent and general freight agent. Three years with the Richmond & Danville Railroad as assistant traffic manager, and upwards of five years with the Southern Railway as traffic manager. In all 29 years.

Int. No. 3. The rates from New Orleans to LaGrange, Ga., via the Louisville & Nashville Railroad, Western of Alabama and Atlanta & West Point R. R. are as follows, in cents per hundred pounds and on class F, per barrel:

1	2	3	4	5	6	A	B	C	D	E	H	F
143	124	109	93	74	59	41	48	33.5	29	66	74	59

State whether or not said rates are, in your opinion, unreasonably high, or reasonably low, and state your reasons for any opinion you may express.

419 Ans. I consider that these rates are reasonably low, as they are in line with the rates to other points in the vicinity of LaGrange, similiarly situated and with which LaGrange companies. Likewise, the rates from New Orleans are relatively adjusted with respect to rates from Memphis, St. Louis, Cincinnati and Louisville. They are, likewise, lower than rates at which the property could be transported by any other known means of rail conveyance between New Orleans and LaGrange. Business has been transported under these rates in the past and with evident profit to the merchants, since the mercantile business of LaGrange covered by the classes named, is increasing.

Int. No. 4. The rates from Atlanta to LaGrange are as follows, in cents per hundred pounds, and on class F, per barrel:

1	2	3	4	5	6	A	B	C	D	E	H	F
40	36	32	29	22	17	17	17	9.5	9	22	29	19

State whether in your opinion said rates are unreasonably high, or reasonably low; and state your reasons for any opinion you may express.

Ans. In my opinion, the rates are reasonably low. They are the same as charged between other points on the A. & W. P. R. R. for the same distance. They are, on all of the numbered classes, lower than the rates charged by most of the railroads in the State of Georgia for the same distance, while on no class named is the rate higher than the other rates charged within the State of Georigia. They are in no instance higher than the rates fixed by the Railroad Commission of Georgia,

which body, as I understand it, is required by law to fix reasonable rates. They are lower than the rates by any other known means of transportation between Atlanta and LaGrange.

Int. No. 5. Suppose the rates from New Orleans to LaGrange on the different classes were reduced by the following amounts in cents per hundred pounds, and on class F, in cents per barrel:

1	2	3	4	5	6	A	B	C	D	E	H	F
40	36	32	29	22	17	17	17	9.5	9	22	25	19

What effect, if any, would it have towards increasing the tonnage and revenue of the L. & N. R. R., Western Railway of Alabama and Atlanta & West Point Railroad on traffic from New Orleans to LaGrange?

420 A reduction in the rates from New Orleans to Lagrange by the above amounts, if confined to LaGrange alone, might increase the tonnage on some of the classes taking the lowest rates at the expense of the near-by local stations on the A. & W. P. R. R., but the total tonnage of the L. & N. R. R., W. Ry. of Ala. and the A. & W. P. R. R. would not, in my opinion, be increased at all—certainly not to any appreciable extent—while the revenue would be reduced based upon the tonnage hauled computed at the amount of reduction per 100 lbs. according to the classes. Whether this reduction in revenue would be borne by the three lines, the L. & N. R. R., W. of Ala. Ry., and A. & W. P. R. R., would depend upon how the reduced rates were divided. If the rate were reduced, the most of the reduction, if not all of it, would I think, be borne by the line between Montgomery and LaGrange. While my opinion is that a reduction in the rates would not increase the total tonnage carried by the railroads named at all, it is most improbable, even if it should increase the tonnage slightly, that the reduction would increase the tonnage sufficiently to prevent a very material reduction in the net revenue of some one or more of the three lines named.

Cross Interrogatories and Answers.

Answers to cross interrogatories in the above entitled cause, on behalf of the complainant therein, propounded to J. M. Culp, of Washington, D. C.

Int. No. 1. How long, or about how long, has the system of rates now in force to Atlanta from Baltimore, Philadelphia, New York and Boston, and from Cincinnati and other Ohio river points and from Memphis and New Orleans existed, and

state whether the rates under that system have been substantially the same during that time?

Answer. The present relative adjustment of rates from the East and the West to Atlanta has been in effect for eleven or twelve years, certainly since 1888, and substantially the same rates under that adjustment have been worked by the transportation lines under normal conditions.

421 Int. No. 2. How long have the rates from New Orleans and the other points named in the preceding interrogatory to Atlanta been substantially the same as they now are?

Answer. The rates in effect at present are substantially the same as worked in 1888.

Int. No. 3. In the absence of competition, would the carriers charge higher than reasonably high rates from New Orleans to Atlanta?

Answer. No; the carriers endeavor to have no rates that are unreasonably high.

Int. No. 4. Has competition caused the rates to Atlanta from New Orleans to be made lower than the carriers might otherwise reasonably charge?

Answer. Yes; the existing rates from New Orleans to Atlanta are the direct result of competition, which has forced the rates down to the figures at which they now are. I know that except for competition the lines from New Orleans to Atlanta would not have made the rates lower than to intermediate points.

Int. No. 5. Has competition at Atlanta caused the rates from New Orleans to LaGrange to be made higher than would otherwise have been charged?

Answer. No; the rates from New Orleans to LaGrange have been reduced on account of the reduced rates from New Orleans to Atlanta, but if it were practicable to advance the rates from New Orleans to Atlanta, or if the conditions had been such as to have enabled the lines from New Orleans to Atlanta to maintain rates as high, or higher than to LaGrange, still the increase in revenue to the railroads because of the higher rates to Atlanta would not have been sufficiently increased to yield the L. & N. R. R., the W. of A. Ry. and the A. & W. P. R. R. an unreasonably increased revenue, or return on the capital invested in those roads.

422 Int. No. 6. In the absence of competition in transportation to Atlanta, would the rates from New Orleans to LaGrange have been made the sum of the through rate from New Orleans through LaGrange to Atlanta plus the local rate from Atlanta back to LaGrange?

Answer. No. In the absence of competition at Atlanta, the rates from New Orleans to LaGrange would not have been higher than from New Orleans to Atlanta. No road in the southern country with which I am familiar, in primarily making a tariff for its line, where the competitive or non-competitive conditions are similar at all points on its line makes a lower rate for a longer distance over the same line in the same direction than for a shorter distance.

Int. No. 7. Is the rate from New Orleans to Atlanta based on any other rate, and if so, on what rate?

Answer. The rates from New Orleans to Atlanta are made on a basis relative to rates from other markets, such as Baltimore, New York, Cincinnati, Louisville, Savannah, etc.—points that are reached by other lines than the A. & W. P. and W. of A. roads, and points in the traffic from which to Atlanta, the A. & W. P. and W. of A. roads do not participate.

Int. No. 8. What is the distance from Opelika to LaGrange?

Answer. The distance from Opelika to LaGrange is thirty-eight (38) miles.

Int. No. 9. Would the giving of shorter distance local stations surrounding Atlanta, rates not higher than the rates for the longer hauls through those stations to Atlanta, increase or diminish the business of Atlanta merchants?

Answer. Such basis applied generally would decrease the business of Atlanta and reduce the revenue of many of the railroads materially—indeed, disastrously.

Int. No. 10. If in answer to the preceding interrogatory you say Atlanta business would be diminished, would that result in a decrease of the tonnage of traffic hauled by the carriers to Atlanta?

Answer. It would result in a decrease of the tonnage to the extent of the business the merchants at the local points
423 surrounding Atlanta purchased direct from the original shippers, such shipments being made direct to the local point instead of to Atlanta and re-shipped.

Int. No. 11. The following is an extract from your testimony in the case of the Interstate Commerce Commission vs. The Clyde Steamship Company, the Atlanta & West Point Railroad Company, et al., as set forth on p. 161 of the record in that case in the Circuit Court of Appeals for the Fifth Circuit, to-wit:

"Cross Q. 50. Did not competition cause the roads to form the Association" (Southern Railway & Steamship Association)?

"Answer. The Assosiation was formed as a means of preventing the roads destroying each other by competition."

Are you still of the opinion expressed in the above answer?

Answer. Yes. The Southern Railway & Steamship Association, however, does not exist and the railroads in the south no longer operate under the rules fixed by the Southern Railway & Steamship Association. J. M. CULP.

United States of America, District of Columbia, City of Washington—ss.

By virtue of an agreement between the counsel of the parties to the above entitled action, the deposition of J. M. Culp, a witness for the defendants therein, was taken upon interrogatories; and I do hereby certify that said witness was first duly sworn and the interrogatories then submitted for his answer, and that said interrogatories, and the answers made thereto, are contained in the foregoing deposition of said witness; and that said deposition was taken before me in the City of Washington, D. C., on this the 13th day of June, 1899.

Witness my hand and official seal at office, this the 13th day of June, 1899. WM. M. NETHERLAND,

[Official Seal] Notary Public in and for the District of Columbia.

(10c Revenue Stamp.)

Filed June 17, 1899, and published by agreement on file, this the 19th day of June, A. D. 1899. RICHARD JONES, Clerk.

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424 DEPOSITION OF GEORGE P. BILES.

In the Circuit Court of the United States for the Southern District of Alabama.

The Interstate Commerce Commission
vs. In Equity, No. 207.
Louisville & Nashville Railroad Company, Western Railway of Alabama, and Atlanta & West Point Railroad Company.

Stipulation.

In this case it is stipulated by counsel for both sides that the following interrogatories may be answered by G. P. Biles of Cincinnati, O., a witness for the defendants, before any notary public, at any time or place, within ten days from the date of this stipulation. Said notary public will swear the witness before submitting the interrogatories, and he will forward the in-

terrogatories and answers immediately to the clerk of the United States Circuit Court, for the Southern District of Alabama, at Mobile Ala.

Formal caption and certificate are waived. All objections to the competency of the witness or relevancy of the testimony are reserved.

This 15th day of May, 1899.

L. A. SHAVER,
Solicitor for Complainant,
ED. BAXTER,
Solicitor for Defts., as of record.

Direct Interrogatories and Answers.

Interrogatories in the above entitled cause on behalf of the defendants therein, as propounded to, and answered by GEORGE P. BILES of Cincinnati, O.

Interrogatory No. 1. State your name, age, residence and occupation.

Answer. Name, George P. Biles; age, 42 years; residence, Newport, Ky.; occupation, general freight agent.

425 Interrogatory No. 2. How long have you been connected with the railroad traffic department in the United States and in what capacities, and state whether or not the nature of your duties has related to the matter of making railroad freight rates in the southern territory.

Answer. I have been connected with the traffic department of the C N. O. & T. P. Ry. in the United States for fifteen years in the capacities of rate clerk, assistant general freight agent and general freight agent. During that time I have constantly had more or less to do with the making of railroad freight rates in southern territory.

Interrogatory No. 3. The rates from New Orleans to LaGrange, Ga., via the Louisville and Nashville R. R., Western Railway of Alabama and Atlanta & West Point R. R., are as follows, in cents per hundred pounds and on Class F per barrel:

1	2	3	4	5	6	A	B	C	D	E	H	F
143	124	109	93	74	59	41	48	33.5	29	66	74	59

State whether or not said rates are, in your opinion, unreasonably high, or reasonably low, and state your reasons for any opinion you may express.

Answer. I consider the rates in question reasonable for various reasons, among which are the following:

(1) Considering the amount of traffic moving from New Orleans to LaGrange, I believe that these rates constitute no more

than a reasonable compensation for the service performed in transporting traffic 425 miles.

(2) They are practically identical with the rates from Memphis, from which point the distance is practically the same (418 miles). They are, as a rule, four cents per hundred pounds less than the rates from Louisville and other Ohio river points.

(3) They compare favorably with the figures which the Georgia Railroad Commission would authorize from a point within the state equi-distant. Using the tariffs authorized by the Georgia Railroad Commission for the railroads under Class 4 as an average of all, and applying the ninety per cent. basis in effect where traffic moves over two distinct lines of railroad, would result in the following comparative figures:

426 Rates from New Orleans:

1	2	3	4	5	6	A	B	C	D	E	H	F
143	124	109	93	74	59	41	48	33.5	29	66	74	59

Rates according to the Georgia Commission scale:

1	2	3	4	5	6	A	B	C	D	E	H	F
148	131	108	90	71	60	60	52	31	28	71	90	60

The traffic in question from New Orleans passes over three lines of railroad, and the comparison with the Georgia scale made on that basis would show the rates from New Orleans in a still more favorable light.

Interrogatory No. 4. The rates from Atlanta to LaGrange are as follows in cents per hundred pounds, and on Class F per barrel:

1	2	3	4	5	6	A	B	C	D	E	H	F
40	36	32	29	22	17	17	17	9.5	9	22	29	19

State whether, in your opinion, said rates are unreasonably high, or reasonably low, and state your reasons for any opinion you may express.

Answer. I consider the rates in question reasonable for various reasons among which are the following:

(1) They are the figures prescribed by the Georgia Railroad Commission, which body is in the best of positions to know what rates are necessary, and what constitutes a reasonable compensation for the service performed.

(2) Because they compare most favorably with rates for a similar distance (71 miles), as in force in other states and approved by the various state commissions, as the following figures will indicate:

Atlanta to LaGrange:

1	2	3	4	5	6	A	B	C	D	E	H	F
40	36	32	29	22	17	17	17	9.5	9	22	29	19

Tennessee Distance Table in force on C. N. O. & T. P. Ry.:

1	2	3	4	5	6	A	B	C	D	E	H	F
44	36	32	28	24	18	18	21	15	13	24	24	26

Alabama Distance Table in force on Southern Railway:

1	2	3	4	5	6	A	B	C	D	E	H	F
55	48	44	40	37	25	22	22	20	17	37	40	40

Mississippi Distance Table in force on K. C. M. & B. R'y:

1	2	3	4	5	6	A	B	C	D	E	H	F
62	52	44	38	33	29	23	23	19	17	29	34	37

Interrogatory No. 5. Suppose the rates from New Orleans to LaGrange on the different classes were reduced by the following amounts in cents per hundred pounds, and on Class F in cents per barrel:

1	2	3	4	5	6	A	B	C	D	E	H	F
40	36	32	29	22	17	17	17	9.5	9	22	25	19

what effect, if any would it have towards increasing the tonnage and revenue of the L. & N. R. R., Western Railway of Alabama, and the Atlanta & West Point R. R., on traffic from New Orleans to LaGrange?

427 Answer. Except so far as this reduction might incline the LaGrange merchants to buy from New Orleans direct instead of purchasing in Atlanta, it would in my opinion, have little, if any, effect toward increasing the tonnage and a marked effect in decreasing the revenue of the railroads between New Orleans and LaGrange, because a reduction of the rates between New Orleans and LaGrange would cause a like reduction from other competing markets, such as Memphis, Louisville, Baltimore, etc., so that the LaGrange merchants would be no more inclined than formerly to buy their goods in New Orleans to the exclusion of other markets (unless it be Atlanta), and the revenue of the railroads would necessarily be depleted if they hauled the same amount of traffic for a less rate per hundred pounds than they now receive. Even the possible increase of tonnage from New Orleans direct to LaGrange at the expense of the Atlanta merchants would probably result in a decrease of the tonnage from New Orleans to Atlanta and from Atlanta to LaGrange.

State of Ohio,
Hamilton County. ss.

Before me personally appeared George P. Biles, General freight agent of the Cincinnati, New Orleans & Texas Pacific Railway Company, this 18th day of May, 1899, and being duly sworn, made oath that he would answer the interrogatories in the case of the Interstate Commerce Commission against the Louisville and Nashville Railroad Company, et al., fully and truthfully.

N. E. HIBBARD,
[Notarial Seal] Notary Public, Hamilton County, Ohio

Cross-Interrogatories and Answers.

Cross-Interrogatories in the above entitled cause, on behalf of the complainant therein, as propounded to, and answered by George P. Biles, of Cincinnati, O.

Cross-Interrogatory No. 1. How long, or about how long, has the system of rates now in force to Atlanta from Baltimore, Philadelphia, New York and Boston, and from Cincinnati and other Ohio river points, and from Memphis and New Orleans, existed, and state whether the rates under that system have been substantially the same during that time?

428

Answer. The present system of rates from Boston, New York, Philadelphia and Baltimore has existed practically intact for about fifteen years. The present system from Cincinnati and other Ohio river points has been in effect for about fifteen years, except that there have been some slight reductions in classes B, C, D and F since the rates originally took effect.

What may be considered the present system of rates from Memphis has been in effect for about fifteen years, except that there have been some slight modifications in Classes B, C, D and F, and that the figures on the other classes have at times varied to the extent of about one cent per hundred pounds.

So far as my information goes, the present adjustment of rates from New Orleans has been in effect for about twelve years, and has remained practically intact, except that the rates on classes B, C, D and F have been slightly modified.

Cross-Interrogatory 2. How long have the rates from New Orleans and the other points named in the preceding interrogatory to Atlanta been substantially the same as they are now?

Answer. My reply to Cross-Interrogatory No. 1 gives in detail the information asked for in this interrogatory. The rates from New Orleans have to the best of my information been substantially the same as now for twelve years, and from the other points in question for fifteen years.

Cross-Interrogatory No. 3. In the absence of competition, would the carriers charge higher than reasonably high rates from New Orleans to Atlanta?

Answer. In my opinion, the rates from New Orleans to Atlanta would, under the circumstances mentioned, be based on a reasonable compensation for the service performed, considering the distance hauled, the amount of traffic moving between the points in question, the expense of building and maintaining the lines of railroad, and the number of different carriers over whose rails the shipments must of necessity pass.

Cross-Interrogatory No. 4. Has competition caused the rates to Atlanta from New Orleans to be made lower than the carriers might otherwise reasonably charge?

429 Answer. In my opinion there is no doubt that the present rates from New Orleans to Atlanta are lower than they would be if competition did not exist and if the reasonable cost of transportation was the only question entering into the rates.

Cross-Interrogatory No. 5. Has competition at Atlanta caused the rates from New Orleans to LaGrange to be made higher than would otherwise have been charged?

Answer. In my opinion it has not.

Cross-Interrogatory No. 6. In the absence of competition in transportation to Atlanta would the rates from New Orleans to LaGrange have been made the sum of the through rate from New Orleans through LaGrange to Atlanta plus the local rate from Atlanta back to LaGrange?

Answer. In my opinion the rates from New Orleans to LaGrange would not have been made higher than a reasonable compensation for the service performed.

Cross-Interrogatory No. 7. Is the rate from New Orleans to Atlanta based on any other rate, and, if so, on what rate? What line of roads first put in force the present rates from New Orleans to Atlanta?

Answer. The present rates from New Orleans to Atlanta are made the same as those in effect from Memphis, Tenn. I have no information at hand indicating what line of roads first put into force the present rates from New Orleans to Atlanta, but believe it was done by joint action of all the carriers interested.

Cross-Interrogatory No. 8. What is the distance from Opelika to LaGrange?

Answer. The distance, as published in the Traveler's Official Guide, is thirty-eight miles.

Cross-Interrogatory No. 9. Would the giving to shorter distance local stations surrounding Atlanta, rates not higher than

the rates for the longer hauls through those stations to Atlanta, increase or diminish the business of Atlanta merchants?

Answer. In my opinion it would have a tendency to diminish the business of Atlanta merchants.

Cross-Interrogatory No. 10. If in answer to the preceding interrogatory, you say Atlanta business would be diminished, would that result in a decrease of the tonnage of traffic hauled by the carriers to Atlanta?

430 Answer. It is my opinion that it would result to some extent in a decrease of the tonnage of traffic hauled by the carriers to Atlanta.

State of Ohio,
Hamilton County. ss.

Before me personally appeared George P. Biles, general freight agent of the Cincinnati, New Orleans & Texas Pacific Railway Company, this 18th day of May, 1899, and being duly sworn made oath that he would answer the cross-interrogatories in the case of the Interstate Commerce Commission against the Louisville and Nashville Railroad Company et al., fully and truthfully.

N. E. HIBBARD,
[Notarial Seal] Notary Public, Hamilton County, Ohio.

Filed May 20th, 1899, and published June 19, 1899, by agreement on file.

RICHARD JONES, Clerk.

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431 NOTE OF SUBMISSION BY COMPLAINANT.

Circuit Court of the United States, Southern District of Alabama.

The Interstate Commerce Commission
No. 207, vs. In Equity.
The Louisville & Nashville R. R. Co., et al.

In the above entitled cause the complainant, the Interstate Commerce Commission, submits on the following:

1. The bill of complaint and exhibits thereto, and replication.

2. The report and opinion of the Interstate Commerce Commission and the facts found by the Commission, as stated therein.

2½. Motion of the complainant to strike from the file the

defendants' proposed findings of fact filed before the Commission.

3. Deposition of Jesse M. Smith.

4. Stipulation between counsel for the complainant and counsel for defendants as to revenue per ton per mile on roads in the United States for the years from 1890 to 1897, both inclusive, and of roads in West Virginia, Virginia, North and South Carolina, for the year of 1897, and of roads in Kentucky, Tennessee, Mississippi, Alabama, Georgia and Florida for the year 1897.

5. Stipulation between counsel for the complainant and counsel for the defendants as to distance class rates under the Standard Freight Tariff, established by the Georgia Railroad Commission as they appear on page 50 of the 26th annual report of that Commission for the year ending October 15th, 1898.

6. Stipulation between counsel for the complainant and counsel for the defendants as to class rates for a distance of 425 miles under the Local Distance Tariff of the Illinois Central R. R. Company (Southern Division), I. C. C., No. B, 316, issued May 18, 1897, and effective June 1, 1897; also as to class rates for a distance of over 300 miles under Local Freight Tariff No. 1047, W. S. of the Southern Railway (Western System), I. C. C. 233, effective February 18, 1895, applying on business within the States of Tennessee and Alabama and on interstate traffic between stations in the States of Tennessee, Alabama, Georgia and Mississippi; and as to class rates for a distance of 430 miles and over 420 miles, under the Joint Freight Tariff of the Southern Railway Company, I. C. C., No. 2910, issued March 2, 1898, and effective March 5, 1898.

7. Depositions of Fuller E. Calloway, E. R. Bradfield, D. A. Dansby, T. S. Bradfield, H. H. Childs T. J. Harwell, J. E. Dunson, J. H. Edmondson, W. V. Gray, B. H. Seay, M. L. Fleming and H. D. Glanton.

M. D. WICKERSHAM,
U. S. District Attorney,
L. A. SHAVER,
Of Counsel for Complainant.

Filed June 19th, 1899. RICHARD JONES, Clerk.

432 NOTE OF SUBMISSION BY DEFENDANTS.

Circuit Court of the United States, Southern District of Alabama.

The Interstate Commerce Commission
No. 207. vs. In Equity.
Louisville & Nashville R. R. Co., et al.

In the above stated cause, the defendants, the Louisville & Nashville Railroad Company, the Western Railway of Alabama and the Atlanta & West Point Railroad Company submit upon the following:

1. The joint and several answer of the Louisville & Nashville Railroad Co., the Western Railway of Alabama and the Atlanta & West Point Railroad Co.
2. Findings of fact proposed by the defendants before the Interstate Commerce Commission, in the case of Fuller E. Calloway vs. Louisville & Nashville Railroad Company, et al.
3. Testimony given before the Interstate Commerce Commission in the case of Fuller E. Calloway vs. Louisville & Nashville Railroad Co. et al., and the exhibits attached thereto.
4. Stipulation of June 16th, 1899, that the extracts attached thereto are true as shown by pages 34 and 38 of the 26th annual report of the Railroad Commission of Georgia.
5. Deposition of T. S. Devant.
6. Deposition of George P. Biles.
7. Deposition of J. M. Culp.
8. Depositions of T. J. Hunter, R. E. Lutz, P. J. McGovern and W. K. Vandiver, and exhibits attached thereto.

ED. BAXTER, Solicitor for Defendants.

Filed June 19th, 1899. RICHARD JONES, Clerk.

ORDER OF SUBMISSION.

Circuit Court of the United States for the Southern District of Alabama, at Mobile, Alabama. May Term, A. D. 1899.

Wednesday Morning, June the 21st, A. D. 1899.

Present: The Honorable Harry T. Toulmin, Judge presiding.

The Interstate Commerce Commission
No. 207. vs. In Equity.
Louisville & Nashville Railroad Co., et al.

The arguments of the respective solicitors in this cause were concluded and the cause submitted thereon together with the pleadings and proofs, and the same taken under consideration by the Court.

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433 OPINION OF THE COURT.

Circuit Court of the United States for the Southern District of Alabama.

The Interstate Commerce Commission, Complainant,
No. 207. vs. In Equity.
Louisville & Nashville Railroad Co., Western Railway of Alabama, and the Atlanta & West Point Railroad Company, Defendants.

December 2nd. 1899.

L. A. Shaver, Esq., solicitor for the I. C. C., and M. D. Wickersham, Esqr., U. S. Attorney for the Southern Dist. of Ala., for the Complainant.
Ed. Baxter, Esq., for the defendants.

TOULMIN, Judge:

On careful examination and consideration of the evidence and arguments in this case, the Court concurs in the conclusions of the Interstate Commerce Commission.

1. That the transportation of freights by the defendants from New Orleans to LaGrange, and the transportation of like freight from New Orleans to Hogansville, to Newnan, to Palmetto and to Fairburn, are under substantially similar circumstances and conditions; and that freight rates over defendants' line which are higher from New Orleans for the shorter distance to LaGrange than for the longer distance to either of the other places mentioned violate section 4 of the Act to Regulate Commerce.

2. That higher rates charged by defendants from New Orleans to LaGrange than for longer distances from New Orleans to Hogansville, Newnan, Palmetto and Fairburn on traffic carried under like circumstances and conditions, and at less cost for the transportation service to LaGrange are unreasonable and un-

just to the petitioner, Fuller E. Calloway, and subject him, and, as a locality, the city of LaGrange itself, to undue and unreasonable prejudice and disadvantage, and give undue preference and advantage to the localities of Hogansville, Newnan, Palmetto and Fairburn, and dealers and merchants doing business therein, and that said higher rates are in violation of sections 1 and 3 of said act.

3. The Court is not so clear as to the proposition that the rates from New Orleans to LaGrange are unreasonable and unjust in themselves and relatively so as compared with the rates to Atlanta. The question as to what is a reasonable and just rate is a very difficult one. "No more difficult problem can be presented than this." "Ames vs. U. P. Rwy. Co., 64 Fed. Rep. 173; U. S. vs. Freight Asso. 166 U. S. 332. But the findings of fact in the report of the Commission are made by law prima facie evidence of the matters therein stated, and the
434 conclusions of the Commission based upon such findings are presumed to be well founded and correct, and they will not be set aside, unless error clearly appears. The record does not clearly show that the Commission's findings and conclusions on this branch of the case are erroneous—are not in accordance with the law and the evidence, and the Court should not overrule, or in any manner interfere with them.

It being made to appear to the Court that the order of the said Commission here drawn in question has been disobeyed, it is ordered that a writ of injunction issue in accordance with the prayer of the petition, restraining the defendants from further continuing such disobedience of said order, and enjoining obedience to the same.

Filed this December 2nd, 1899. RICHARD JONES, Clerk.

DECREE GRANTING INJUNCTION.

Circuit Court of the United States for the Southern District of Alabama. November Term, A. D. 1899.

The Interstate Commerce Commission
No. 207. vs. In Equity.
Louisville & Nashville Railroad Co., Western Railway of Alabama, and the Atlanta & West Point Railroad Co.

On petition for Writ of Injunction.

This cause having been submitted for decree on the pleadings,

proofs and arguments at the last term of the Court, on to-wit: June 21st, 1899, and the same having been duly considered by the Court, the Court is of the opinion that the order of the said Interstate Commerce Commission here drawn in question has been disobeyed by the defendants herein and that the prayer of said petition for a writ of injunction should be granted.

It is therefore ordered, adjudged and decreed by the Court that a writ of injunction issue as prayed for in said petition, restraining the said defendants from further continuing such disobedience of said order, and enjoining obedience to the same.

Done this the 2nd day of December, A. D. 1899.

HARRY T. TOULMIN, Judge.

Filed December 2nd, A. D. 1899, and entered on the minutes page 728. RICHARD JONES, Clerk.

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435 WRIT OF INJUNCTION AND RETURNS.

Circuit Court of the United States for the Southern District of Alabama.

The Interstate Commerce Commission

No. 207. vs. In Equity.

Louisville & Nashville Railroad Co., et al.

The Uuited States of America, Southern District of Alabama.

The President of the United States of America to the Louisville & Nashville Railroad Company, The Western Railway of Alabama and The Atlanta & West Point Railroad Company—Greeting:

Whereas, The Interstate Commerce Commission, a department of the Government of the United States of America, has filed on the Chancery side of the Circuit Court of the United States for the Southern District of Alabama, Fifth Judicial Circuit, at Mobile, Alabama, a bill of complaint against The Louisville & Nashville Railroad Company, The Western Railway of Alabama and The Atlanta & West Point Railroad Company, and has obtained a decree for an injunction, as prayed for in said bill.

Now, therefore, we having regard to the matters in said bill contained, do hereby strictly enjoin you, the said Louisville & Nashville Railroad Company, The Western Railway of Alabama and The Atlanta & West Point Railroad Company, and each of you.

1. From charging, demanding, collecting or receiving rates for the transportation of the several kinds or classes of freight from New Orleans, Louisiana, to LaGrange, Georgia, which, as a whole or upon any article of merchandise, are in any respect unreasonable or unjust.

2. From charging, demanding, collecting or receiving the following unreasonable, unjust and unlawful rates for the transportation from New Orleans, Louisiana, to LaGrange, Georgia, of articles embraced in the various classes; that is to

436 say:

Rates in Cents Per 100 Pounds.

Classes	1	2	3	4	5	6							Per
Rates	143.	124.	109.	93.	74.	59.							Barrel.
							A	B	C	D	E	H	F
							41.	48.	33½.	29.	66.	74.	59.

3. From charging, demanding, collecting or receiving rates or charges for the transportation of freight articles from New New Orleans, Louisiana, to LaGrange, Georgia, which are equal to rates or charges contemporaneously in force on like traffic carried from New Orleans, Louisiana, through LaGrange to Atlanta, Georgia, added to local rates in force on such traffic for local service over the Atlanta & West Point Railroad back from Atlanta to LaGrange.

4. From charging, demanding, collecting or receiving any greater compensation in the aggregate for transporting freight articles from New Orleans, Louisiana, for the shorter distance to LaGrange, Georgia, than they contemporaneously charge, demand, collect or receive for transporting a like kind of freight from New Orleans, Louisiana, for the longer distance over the same line in the same direction to Hogansville, or Newnan, or Palmetto, or Fairburn, Georgia, the shorter being included within the longer distance.

5. From charging, demanding, collecting or receiving unreasonable, unjust, unduly prejudicial and unlawful rates for the transportation of freight articles from New Orleans, Louisiana, to LaGrange, Georgia, which are higher than aggregate rates contemporaneously charged, demanded, collected or received for the transportation of like kind of freight from New Orleans, Louisiana, to Hogansville, or to Newnan, or to Palmetto, or to Fairburn, Georgia.

437 6. From charging and collecting rates or compensation which subject Fuller E. Callaway and other dealers and consignees at LaGrange, Georgia, their traffic, or the City of LaGrange, itself, to undue or unreasonable prejudice or disadvantage in any respect whatsoever, and to cease and desist

from giving any undue or unreasonable preference or advantage to merchants, dealers and consignees at Atlanta, Fairburn, Palmetto, Newnan, or Hogansville, Georgia, or to their traffic or to either of such cities or localities, as against said Fuller E. Callaway, and said other dealers and consignees at LaGrange or the City of LaGrange itself.

Which injunctions you are respectfully required to observe and obey, and herein fail not, under penalty of the law.

Witness the Hon. Melville W. Fuller, Chief Justice of the United States, this the seventh (7) day of December, 1899, and in the — year of the Independence of the United States of America.

Attest: [Seal] RICH'D JONES, Clerk.

Received in office Dec. 7th, 1899.

FRANK SIMMONS,
U. S. Marshal, Sou. Dist. Ala.

I hereby certify that I served copies of the within writ on George C. Smith, President of the Western Railway of Alabama, and of the Atlanta & West Point Railroad Company, in Atlanta, Fulton County, Ga., on the 9th day of Dec., 1899.

W. H. JOHNSON, U. S. Marshal,
By J. H. RINARD, Deputy.

Executed the within writ on the Louisville & Nashville R. R. Company by delivering a true copy of same to Milton H. Smith, President of said Company, this 20th day of December, 1899.

A. D. JAMES, U. S. Marshal,
By M. C. JAMES, Deputy.

Returned and filed December 28th, 1899.

RICHARD JONES, Clerk.

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438 PETITION BY DEFENDANTS TO HAVE DECREE GRANTING INJUNCTION SUSPENDED AND THE INJUNCTION ISSUED THEREUNDER SUSPENDED AND SUPERSEDED.

In the Circuit Court of the United States for the Southern District of Alabama, at Mobile, Ala.

The Interstate Commerce Commission
vs. In Equity. No. 207.
Louisville & Nashville Railroad Company, Western Railway of Alabama, and Atlanta & West Point Railroad Company.

To the Circuit Court of the United States, sitting in Equity, within and for the Southern District of Alabama:

Your petitioners, the Louisville & Nashville Railroad Company, the Western Railway of Alabama, and the Atlanta & West Point Railroad Company, respectfully show unto your Honors that on the 25th day of October, 1895, one, Fuller E. Calloway, filed a complaint or petition before the Interstate Commerce Commission, alleging violations on the part of your petitioners of certain provisions of the Act to Regulate Commerce; that such proceedings were had upon said complaint or petition, that said Commission filed a report and opinion that your petitioners had violated the provisions of said Act in certain respects; and said Commission on December 31, 1897, formulated an order and notice in relation to the matters and things charged in said complaint or petition based upon the finding and determination of said Commission.

Your petitioners further show that afterwards said Commission filed a bill or petition in this Honorable Court against your petitioners, praying among other things for a writ of injunction to restrain your petitioners, and each of them, from further continuing in their violation of and disobedience to said order of said Commission; and such proceedings were had
439 in this Honorable Court under said bill or petition, that on December 2nd, 1899, it was decreed by the Court that the order of the said Interstate Commerce Commission, above referred to, has been disobeyed by your petitioners and that the prayer of said petition (filed by said Commission) for a writ of injunction should be granted; and it was thereupon ordered, adjudged and decreed by the Court that a writ of injunction issue as prayed for in said petition, restraining your petitioners from further continuing such disobedience of said order, and enjoining obedience to the same.

Your petitioners further show that on Dec. 7th, 1899, a writ of injunction was duly issued from this Honorable Court enjoining your petitioners, among other things, "from charging, demanding, collecting or receiving rates for the transportation of the several kinds or classes of freight from New Orleans, Louisiana, to LaGrange, Georgia, which as a whole, or upon any article of merchandise, are in any respect unreasonable or unjust."

Said Commission in its said Report and Opinion, found and reported that freight rates charged by your petitioners from New Orleans to LaGrange, in so far as they are higher than rates charged by them on like traffic from New Orleans to Atlanta, are unreasonable and unjust; and said Commission in its said order and notice, ordered your petitioners to cease and de-

sist from charging, demanding, collecting or receiving rates or charges for the transportation of freight from New Orleans, La., to LaGrange, Ga., which are higher than your petitioners' rates in like traffic carried from New Orleans to Atlanta.

Your petitioners further show that in said writ of injunction issued from this Honorable Court, your petitioners are enjoined, among other things, "from charging and collecting rates or compensation which subject Fuller E. Calloway and other dealers and consignees at LaGrange, Georgia, their traffic, or the City of LaGrange itself, to undue or unreasonable prejudice or disadvantage in any respect whatsoever, and to cease and desist from giving any undue or unreasonable preference or advantage to merchants, dealers and consignees at Atlanta," etc.

Said Commission in its said Report and Opinion found and reported that freight rates charged by your petitioner from New Orleans to LaGrange, in so far as they are higher than rates charged by them on like traffic from New Or-
440 leans to Atlanta, are "wrongfully discriminating and unduly prejudicial to complainant and other dealers at LaGrange, and any such higher rates to LaGrange would be so unreasonable, unjust, discriminating and prejudicial," and said Commission in its said order and notice ordered your petitioners to cease and desist from charging, demanding, collecting or receiving rates or charges for the transportation of freight from New Orleans, La., to LaGrange, Ga., which are higher than your petitioners' rates on like traffic carried from New Orleans to Atlanta, such higher rates being stated in said order and notice to be unduly prejudicial and unlawful.

Your petitioners further show that they desire to pray an appeal from the said decree rendered by this Court in the above entitled cause on the 2nd day of December, 1899, to the United States Circuit Court of Appeals for the Fifth Circuit, and petitioners have ready to be filed with the Clerk of this Court their petition for appeal, together with an assignment of errors and an appeal bond, to be approved by the Court.

As your petitioners construe the said writ of injunction issued from this Honorable Court, your petitioners, if they should continue to transport freight over their through line from New Orleans to LaGrange and Atlanta, respectively, must reduce their rates from New Orleans to LaGrange so that they will not be higher than their rates from New Orleans to Atlanta.

Such reduction will amount upon the following classes to the following cents per hundred pounds (except on Class F, which is per barrel.)

Classes in Cents Per Hundred Pounds.												Per Barrel.
1	2	3	4	5	6	A	B	C	D	E	H	F
40	36	32	29	22	17	17	17	9.5	9	22	25	19

Your petitioners submit that if they should put in said reduced rates from New Orleans to LaGrange and should accept the same for the transportation of freight between those two points, they could not, in case the said decree of this Court should be reversed, recover back from shippers or consignees the difference between such reduced rates and your petitioners' present rates from New Orlans to LaGrange; and therefore your petitioners aver that the loss which they would sustain by such reduction in rates on freight shipped from New Orleans to La-

Grange pending your petitioners' appeal will be irrem-
441 ediable.

Your petitioners further show that if they should put in said reduced rates from New Orleans to LaGrange, persons shipping from New Orleans to Newnan, Moreland, St. Charles, Grantville, Spear's Spur, Hogansville, Louise, Whitfield, Dixie, Gabbettsville and West Point, Georgia, (local stations on the line of the Atlanta & West Point Railroad and the Western Railway of Alabama) could by using such reduced rates from New Orleans to LaGrange and adding thereto the local rates of the Atlanta & West Point Railroad from LaGrange to said local stations, obtain combination rates from New Orleans to said local stations, respectively, which are less than your petitioners' present rates from New Orleans to said local stations, respectively, upon the following classes to the following amounts in cents per hundred pounds (except upon Class F, which is per barrel):

Newnan, Ga.

												Per barrel
1	2	3	4	5	6	A	B	C	D	E	H	F
4	3	3	3	3	1	1	1	.5	1	4	4	1.5

Moreland and St. Charles, Ga.

												Per barrel
1	2	3	4	5	6	A	B	C	D	E	H	F
8	7	6	5	5	2	2	2	1	1.5	5	5	2.5

Grantville, Ga.

1	2	3	4	5	6	A	B	C	D	E	H	Per barrel F
11	10	10	9	7	3	3	3	1.5	2	7	9	3.5

Spear's Spur, Ga.

1	2	3	4	5	6	A	B	C	D	E	H	Per barrel F
15	14	12	12	9	5	5	5	3	3	9	12	5.5

Hogansville, Ga.

1	2	3	4	5	6	A	B	C	D	E	H	Per barrel F
16	15	13	13	9	5	5	5	3	3	9	13	5.5

Louise and Whitfield, Ga.

1	2	3	4	5	6	A	B	C	D	E	H	Per barrel F
26	23	20	19	14	10	10	10	5	5.5	14	19	10

Dixie, Ga.

1	2	3	4	5	6	A	B	C	D	E	H	Per barrel F
27	24	21	20	14	10	10	10	5	5.5	14	16	10

Gabbettsville, Ga.

1	2	3	4	5	6	A	B	C	D	E	H	Per barrel F
23	23	20	18	13	9	9	9	4.5	4.5	13	10	8.5

West Point, Ga.

1	2	3	4	5	6	A	B	C	D	E	H	Per barrel F
8	8	7	7	5	3	3	7	5	4.5	8	1	9

Your petitioners submit that if they should put in said reduced rates from New Orleans to LaGrange, which would thereby reduce the rates by the above amounts, from New Orleans to Newnan, Moreland, St. Charles, Grantville, Spear's Spur, Hogansville, Louise, Whitfield, Dixie, Gabbettsville and West

Point, they could not, in case the said decree of this Court should be reversed, recover back from shippers or consignees
442 the difference between such reduced rates and petitioners' present rates from New Orleans to Newnan, Moreland, St. Charles, Grantville, Spear's Spur, Hogansville, Louise, Whitfield, Dixie, Gabbettsville and West Point, and therefore petitioners aver that the loss which they would sustain by such reduction in rates on freight shipped from New Orleans to Newnan, Moreland, St. Charles, Grantville, Spear's Spur, Hogansville, Louise, Whitfield, Dixie, Gabbettsville and West Point pending your petitioners' appeal, will be irremediable.

Your petitioners further show that if they should put in said reduced rates from New Orleans to LaGrange, said rates would be lower than the present rates from New Orlenas to the following stations on the Western Railway of Alabama, between LaGrange and Montgomery, which stations are nearer than LaGrange is to New Orleans, viz: Cusseta, Opelika, Auburn, Loachapoka, Notasulga, Cloughs, Chehaw, Franklin, Milstead, Cowles, Clietts, Shorters, Goodwyns, Scotts, Sayres, Merritts, Mt. Meigs, Tippecanoe and Seven Mile. Said reduced rates from New Orleans to LaGrange would be lower upon the following classes to the following amounts in cents per hundred pounds (except upon Class F, which is per barrel) than the present rates from New Orleans to

Cusseta, Ala.

												Per barrel
1	2	3	4	5	6	A	B	C	D	E	H	F
22	20	18	16	14	11	11	15	14	11	17	11	26

Opelika, Ala.

												Per barrel
1	2	3	4	5	6	A	B	C	D	E	H	F
0	0	0	0	0	0	0	2	2	2	2	2	4

Auburn, Ala.

												Per barrel
1	2	3	4	5	6	A	B	C	D	E	H	F
20	18	16	13	12	9	9	13	12	10	15	9	25

Loachapoka, Ala.

1	2	3	4	5	6	A	B	C	D	E	H	Per barrel F
22	20	18	16	14	11	11	15	14	10	17	9	26

Notasulga, Ala.

1	2	3	4	5	6	A	B	C	D	E	H	Per barrel F
25	23	21	16	15	11	12	16	13	10	18	8	28

Cloughs and Chehaw, Ala.

1	2	3	4	5	6	A	B	C	D	E	H	Per barrel F
24	25	21	14	15	10	14	13	12	9	21	7	28

Franklin, Ala.

1	2	3	4	5	6	A	B	C	D	E	H	Per barrel F
21	23	19	13	14	9	15	13	12	9	20	6	28

Milstead and Cowles, Ala.

1	2	3	4	5	6	A	B	C	D	E	H	Per barrel F
19	20	17	12	13	8	14	12	11	8	19	2	24

Clietts, Shorters and Goodwyns, Ala.

1	2	3	4	5	6	A	B	C	D	E	H	Per barrel F
14	17	15	11	12	7	13	11	9	6	18	0	20

Scotts, Sayres and Merritts, Ala.

1	2	3	4	5	6	A	B	C	D	E	H	Per barrel F
11	14	12	9	10	6	12	10	9	5	16	1	16

Mt. Meigs, Ala.

1	2	3	4	5	6	A	B	C	D	E	H	Per barrel F
8	11	9	7	9	5	1	9	8	5	15	2	14

Tippecanie and Seven Mile, Ala.

													Per barrel
1	2	3	4	5	6	A	B	C	D	E	H	F	
6	9	7	4	7	3	9	7	6	4	13	4	13	

443 Your petitioners aver that if they should put in said reduced rates from New Orleans to LaGrange and thereby make the rates from New Orleans to LaGrange less than to said shorter distance points, Cusseta, Opelika, Auburn, Loachapoka, Notasulga, Cloughs, Chehaw, Franklin, Milstead, Cowles, Clietts, Shorters, Goodwyns, Scotts, Sayres, Merritts, Mt. Meigs, Tippecanoe and Seven Mile, shippers and consignees at said shorter distance points will file petitions or complaints before the Interstate Commerce Commission, alleging that the making of such lower rates to LaGrange renders the rates from New Orleans to said shorter distance points unjust and unreasonable in themselves; constitutes an undue prejudice against said shorter distance points in favor of LaGrange, and violates the long and short haul clause of the fourth section of the Act to Regulate Commerce.

Your petitioners aver that if they should reduce the rates from New Orleans to said shorter distance points, so as to make them not higher than the reduced rates from New Orleans to LaGrange, your petitioners would sustain a serious loss of revenue on shipments from New Orleans to said shorter distance points, which loss of revenue would be irremediable, if the said decree of this Court, from which your petitioners desire to appeal as aforesaid, should be reversed.

Your petitioners aver that to comply with said decree of this Court pending said appeal, will necessitate a readjustment and reduction of all the rates charged by your petitioners from New Orleans to every station on the Atlanta & West Point Railroad and the Western Railway of Alabama, from and including Newnan, Ga., a point 32 miles east of LaGrange, to and including Seven Mile, a point 97 miles west of LaGrange; or if your petitioners should refuse to readjust and reduce said rates, they will be subjected to a multiplicity of suits by shippers and consignees at said stations.

Your petitioners aver that the rates charged by them from New Orleans to said stations have been in force for many years, and if your petitioners should make such readjustment and reduction in said rates in obedience to said decree of this Court, pending said appeal, it would be difficult, if not impossible, to restore the present rates, if said decree of this Court should be reversed.

444 Your orators aver that as reported by the Commission on page 18 of its report and opinion, it was proven that the freight carried over your petitioners' through line from New Orleans to LaGrange for the year ending June 30, 1895, amounted to only one hundred tons. The greatest reduction ordered by the Commission in the rates from New Orleans to LaGrange was 40 cents per hundred pounds upon first-class freight, and if the entire one hundred tons carried from New Orleans to LaGrange in 1895 had consisted of first-class freight, the reduction would have amounted to $800.00. The Commission, however, on page 17 of its Report and Opinion reports that 36 tons of the 100 tons carried from New Orleans to LaGrange in 1895 consisted of molasses, sugar, and sixth-class freight, the rates upon which are much less than upon first-class freight; and the Commission on page 22 of its Report and Opinion estimates that the reduction in rates to LaGrange would not represent more than $131.25 on the traffic handled during the year 1895.

If the rates from New Orleans to LaGrange were alone involved, petitioners might afford to stand the loss that would be occasioned by a compliance with said decree of this Court pending said appeal, but as above shown, the reduction of rates from New Orleans to LaGrange will necessitate a readjustment and reduction of rates from New Orleans to all the stations between Newnan and Seven Mile, and such a reduction would result in a very serious loss of revenue to petitioners. Petitioners are willing and here offer to keep an accurate account of each and every shipment made from New Orleans to LaGrange, pending said appeal, which account shall show the dates of shipments, the names of consignors and consignees, the class of freight carried, and the rate of freight charged, and to make reports to this Court of such shipments as often as the Court may so order; and your petitioners also hereby offer to execute a bond with sufficient surety to be approved by this Court, payable to the Interstate Commerce Commission, or to the United States, or to such other payee as the Court may direct, in such penalty as the Court may order, conditioned for the prompt payment by your petitioner to such person or persons, as may be entitled thereto, such amount as your petitioners may collect pending said appeal, over and above said reduced rates
445 from New Orleans to LaGrange, as ordered by said Commission and decreed by this Court; or said bond may be conditioned in such manner as this Honorable Court may deem just and equitable to protect the interests of shippers and consignees pending said appeal.

The premises considered, your petitioners pray that the exe-

cution of said decree rendered by this Court in the above entitled cause on December 2nd, 1899, be suspended, and that said injunction issued from this Honorable Court on December 7th, 1899, be suspended and superseded, and that your petitioners be authorized to continue to charge their present rates from New Orleans to LaGrange, pending your petitioners' said appeal.

As in duty bound, your petitioners will ever pray, etc.

This is the first application for a suspension of the execution of said decree or for a supersedeas of said injunction.

ED. BAXTER,
Solicitor for Petitioners.

State of Alabama,
County of Mobile.

Personally appeared before me, Richard Jones, Clerk of the Circuit Court of the United States for the Southern District of Alabama, at Mobile, Ala., R. E. Lutz, agent for the above named petitioners and traffic manager of said Atlanta & West Point Railroad and the Western Railway of Alabama, and made oath in due form of law, that the facts stated in the foregoing petition, as of petitioners' own knowledge are true, and that those stated as upon information and belief, he believes to be true.

R. E. LUTZ.

Sworn to and subscribed before me on this 11th day of December, 1899.

RICHD. JONES,
Clerk U. S. Circuit Court, So. Dist. Alabama.

Filed Dec. 11, 1899. RICHARD JONES, Clerk.

446 DECREE SUSPENDING DECREE GRANTING INJUNCTION AND SUSPENDING AND SUPERSEDING INJUNCTION AND REQUIRING SPECIAL BOND, ETC.

In the Circuit Court of the United States for the Southern District of Alabama, at Mobile, Ala.

The Interstate Commerce Commission, Complainant,
vs. In Equity, No. 207.
The Louisville & Nashville Railroad Company, the Western Railway of Alabama, and the Atlanta & West Point Railroad Company, Defendants.

This case came on further to be heard on this the 12th day of December, 1899, upon the previous proceedings, and the petition filed herein on the 11th day of December, 1899, by said defendants, praying for a suspension of the decree rendered herein

on December 2nd, 1899, and for a suspension and supersedeas of the injunction issued herein on December 7th, 1899, pending the appeal, which said defendants desire to pray from said decree.

And it appearing to the Court that said defendants may be subjected to irreparable injury and to a multiciplicity of suits, if said decree and injunction should be enforced pending said appeal, it is ordered, adjudged and decreed by the Court, that pending said appeal, said defendants keep an accurate account of each and every shipment of freight made from New Orleans, La., to LaGrange, Ga., over their line, showing the dates of shipment, names of consignors and consignees, the class and weight of freight carried and the rate of freight charged, and make reports thereof to this Court once every three months, pending said appeal; and that said defendants execute bond with sufficient surety to be approved by the Court payable to the United States of America for the benefit of whom it may concern, in the penalty of five thousand dollars, conditioned that if said defendants fail to prosecute said appeal to effect, they will promptly pay to such person or persons as may be entitled thereto such amounts as said defendants may collect from such person or persons, for the transportation of freight from
447 New Orleans to LaGrange, pending said appeal, over and above the reduced rates from New Orleans to LaGrange, as ordered by said Commission, and decreed by this Court.

And thereupon said defendants executed said bond, and the same was approved by the Court, and it is ordered, adjudged and decreed by the Court that said decree be suspended, and that said injunction be suspended and superseded, pending said appeal. HARRY T. TOULMIN, Judge.

Dec. 12, '99, 12.50 P. M.

Filed December 12th, 1899, at 12.50 P. M.
RICHARD JONES, Clerk.

SPECIAL BOND UNDER DECREE SUSPENDING AND SUPERSEDING INJUNCTION.

In the Circuit Court of the United States for the Southern District of Alabama, at Mobile, Ala.

The Interstate Commerce Commission, Complainant,
vs. In Equity, No. 207.
The Louisville & Nashville Railroad Company, the Western Railway of Alabama, and the Atlanta & West Point Railroad Company, Defendants.

Know all men by these presents that we, the Louisville & Nashville Railroad Company, the Western Railway of Alabama, and the Atlanta & West Point Railroad Company, as principals, and the Fidelity and Deposit Company of Maryland, of the City of Baltimore, and State of Maryland, as surety, are held and firmly bound unto the United States of America, for the benefit of whom it may concern, in the sum of five thousand dollars, to be paid to the said United States of America, for the benefit of whom it may concern; for the payment of which well and truly to be made, we bind ourselves and each of us, our and each of our successors, heirs, executors and administrators, jointly and severally, firmly by these presents.

448 Sealed with our seals, and dated the 12th day of December, in the year of our Lord eighteen hundred and ninety-nine.

Whereas, the above named, the Louisville & Nashville Railroad Company, the Western Railway of Alabama, and the Atlanta & West Point Railroad Company, have filed a petition herein, praying for a suspension of the decree rendered December 2nd, 1899, in the above entitled cause, in the Circuit Court of the United States, for the Southern District of Alabama, and for a suspension and supersedeas of the injunction issued in said cause from said Court on December 7th, 1899, pending the appeal, which said defendants desire to pray from said decree.

Now, therefore, the condition of this obligation is such that if the above named, the Louisville & Nashville Railroad Company, the Western Railway of Alabama, and the Atlanta & West Point Railroad Company in the event they fail to prosecute said appeal to effect, shall promptly pay to such person or persons as may be entitled thereto, such amounts as the said defendants may collect from such person or persons, for the transportation of freight from New Orleans to LaGrange, pending said appeal over and above the reduced rates from New Orleans to LaGrange, as ordered by said Commission and decreed

by this Court, then this obligation shall be void; otherwise the same shall remain in full force and virtue.

THE LOUISVILLE & NASHVILLE RAILROAD COMPANY, [Seal]
By ED. BAXTER, Its Solicitor.

THE WESTERN RAILWAY OF ALABAMA, [Seal]
By ED. BAXTER, Its Solicitor.

THE ATLANTA & WEST POINT RAILROAD COMPANY, [Seal]
By ED. BAXTER, Its Solicitor.

(Seal of Fidelity & Deposit Co.)
D. P. COLEMAN & CO.,
Local Agts. Fidelity & Deposit Co. of Md.
THE FIDELITY & DEPOSIT CO. OF MD., [Seal]
By ALFRED PROSKAUER, Their Atty. in Fact.
(25c Revenue Stamp.)

Sealed and delivered, taken and acknowledged before me, and approved by me this 12th day of December, 1899.

HARRY T. TOULMIN,
U. S. District Judge.

Filed Dec. 12, 1899, at 12:50 P. M.
RICH'D JONES, Clerk.

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449 ASSIGNMENT OF ERRORS BY THE DEFENDANTS.

In the Circuit Court of the United States for the Southern District of Alabama, at Mobile, Ala.

The Interstate Commerce Commission, Complainant,
No. 207. vs. In Equity.
The Louisville & Nashville Railroad Company, The Western Railway of Alabama, and The Atlanta & West Point Railroad Company, Defendants.

On the twelfth day of December, in the year of our Lord, eighteen hundred and ninety-nine, in the City of Mobile and State of Alabama, came the defendants, the Louisville & Nashville Railroad Company, the Western Railway of Alabama and the Atlanta & West Point Railroad Company, by Ed. Baxter, their solicitor, and say that in the decree rendered by said Circuit Court in the above entitled cause on the 2nd day of De-

cember, 1899, and in the record and proceedings in said cause in said Court, there is manifest error in this, to-wit:

I. That said Circuit Court erred because it failed to adjudge and decree that the matters of equity alleged in the petition or bill filed in the above entitled cause in said Court by the Interstate Commerce Commission, complainant, against the above named defendants are fully denied in the answer, and are not sustained by the proof, and that said petition or bill be dismissed.

II. That said Circuit Court erred because it ordered, adjudged and decreed that a writ of injunction issue as prayed for in said petition or bill, restraining said defendants from further continuing the disobedience of the order made by the Interstate Commerce Commission on December 31, 1897, in the case of Fuller E. Calloway vs. said defendants; and enjoining obedience to said order.

450 III. That said Circuit Court erred in decreeing that said defendants be enjoined to cease and desist from charging, demanding, collecting or receiving the following rates for the transportation from New Orleans, Louisiana, to LaGrange, Ga., of articles embraced in the various classes of their freight classification, that is to say:

Classes.	Rates in cents per 100 pounds.										Per barrel
1	2	3	4	5	6	A	B	C	D	E	H	F
143	124	109	93	74	59	41	48	33	29	66	74	59

IV. That said Circuit Court erred in enjoining said defendants and each of them from charging, demanding, collecting or receiving rates or charges for the transportation of freight articles from New Orleans, Louisiana, to LaGrange, Georgia, which are equal to rates or charges contemporaneously in force over their railroads on like traffic carried from New Orleans through LaGrange to Atlanta, Georgia, added to local rates in force on such traffic for local service over the Atlanta & West Point Railroad back from Atlanta to LaGrange, and in holding that such combined rates are reasonable, unjust, unduly prejudicial and unlawful to the extent of such added local charges of the defendant, the Atlanta & West Point Railroad Company.

V. That said Circuit Court erred in decreeing that said defendants and each of them be enjoined to cease and desist from charging, demanding collecting or receiving any greater compensation in the aggregate for the transportating of freight articles from New Orleans, Louisiana, for the shorter distance to LaGrange than they contemporaneuosly charge, demand, collect or receive for transporting the like kind of freight traffic

from New Orleans for the longer distance over the same line in the same direction to Hogansville, or Newnan, or Palmetto, or Fairburn, Ga., the shorter being included within the longer distance.

VI. That said Circuit Court erred in decreeing that said defendants and each of them be enjoined to cease and desist from charging, demanding, collecting or receiving rates for the transportation of freight articles from New Orleans to LaGrange, which are higher than the aggregate rates contemporaneously charged, demanded, collected or received by them or either of them for the transportation of like kind of freight from New Orleans to Hogansville, or from New Orleans to Newnan, or from New Orleans to Palmetto, or from New Orleans to Fairburn; and in decreeing that such higher
451 rates are unreasonable, unjust, unduly prejudicial and unlawful.

VII. That said Circuit Court erred in decreeing in effect that the transportation of freight by said defendants from New Orleans to LaGrange is done under substantially similar circumstances and conditions as the transportation of freight from New Orleans to Hogansville, Newnan, Palmetto and Fairburn.

VIII. That said Circuit Court erred in decreeing in effect that freight rates over defendants' line, which are higher from New Orleans for the shorter distance to LaGrange, than for the longer distance to Hogansville, Newnan, Palmetto or Fairburn, violate the fourth section of the Act to Regulate Commerce.

IX. That said Circuit Court erred in decreeing in effect that higher rates charged by said defendants from New Orleans to LaGrange than for the longer distances from New Orleans to Hogansville, Newnan, Palmetto and Fairburn are unreasonable and unjust to complainant, and subject him and as a locality, the City of LaGrange, itself, to undue and unreasonable prejudice and disadvantage, and give undue preference and advantage to the localities of Hogansville, Newnan, Palmetto and Fairburn, and dealers and merchants doing business therein; and that said higher rates are in violation of sections one and three of said Act to Regulate Commerce.

X. That said Circuit Court erred in decreeing that the defendants' rates from New Orleans to LaGrange are unreasonable and unjust in themselves, and relatively so, as compared with their rates from New Orleans to Atlanta.

XI. That said Circuit Court erred, because it in effect decided that the transportation of property by said defendants from New Orleans to Atlanta is done under substantially similar

circumstances and conditions as the transportation of property by said defendants from New Orleans to LaGrange.

XII. That said Circuit Court erred because it in effect decided that the Interstate Commerce Commission has the power to fix the rates of transportation to be charged by said defendants for property carried by them from New Orleans to LaGrange.

452 XIII. That said Circuit Court erred because it in effect decided that the Interstate Commerce Commission has the power to fix the relative rates of transportation to be charged by said defendants for property carried by them from New Orleans to LaGrange, Hogansville, Newnan, Palmetto, Fairburn and Atlanta respectively.

XIV. That said Circuit Court erred because it in effect decided that it, the said Circuit Court has the power to fix the rates of transportation to be charged by said defendants for property carried by them from New Orleans to LaGrange.

XV. That said Circuit Court erred because it in effect decided that it, said Circuit Court, has the power to fix the relative rates of transportation to be charged by said defendants for property carried by them from New Orleans to Hogansville, Newnan, Palmetto, Fairburn and Atlanta respectively.

XVI. That said Circuit Court erred, because it did not order, adjudge and decree that said order made by the Interstate Commerce Commission on December 31, 1897, in the case of Fuller E. Calloway against said defendants is unlawful and void, and should not be enforced.

Wherefore, the above named defendants, the Louisville & Nashville Railroad Company, the Western Railway of Alabama, and the Atlanta & West Point Railroad Company pray that said decree of said Circuit Court of the United States for the Southern District of Alabama rendered in the above entitled cause on the second day of December, 1899, be reversed, and that said Circuit Court be ordered to enter a decree dismissing the petition or bill filed in the above entitled cause in said Court by the Interstate Commerce Commission, complainant, against said defendants.

ED. BAXTER,
Solicitor for above named Defendants and Appellants.

Filed December 12th, 1899, at 12:55 o'clock P. M.
RICHD. JONES, Clerk.

453 PETITION FOR APPEAL BY DEFENDANTS.

In the Circuit Court of the United States for the Southern District of Alabama, at Mobile, Ala.

The Interstate Commerce Commission, Complainant.
vs. In Equity, No. 207.
The Louisville & Nashville Railroad Company; the Western Railway of Alabama; and the Atlanta & West Point Railroad Company, Defendants.

The above named defendants, the Louisville & Nashville Railroad Company; the Western Railway of Alabama; and the Atlanta & West Point Railroad Company, conceiving themselves aggrieved by the decree entered in this cause on the 2nd day of December, 1899, do hereby appeal from said decree to the United States Circuit Court of Appeals for the Fifth Circuit, and they pray that their said appeal may be allowed, and that a transcript of the record and proceedings and papers upon which said decree was made, duly authenticated, may be sent to the United States Circuit Court of Appeals for the Fifth Circuit.

ED. BAXTER,
Solicitor for the above named Defendants.

Filed Decr. 12th, 1899, at 12:55 o'clock P. M.
RICHD. JONES, Clerk.

ORDER GRANTING APPEAL.

In the Circuit Court of the United States for the Southern District of Alabama, at Mobile, Ala.

The Interstate Commerce Commission, Complainant.
vs. In Equity, No. 207.
The Louisville & Nashville Railroad Company; the Western Railway of Alabama; and the Atlanta & West Point Railroad Company, Defendants.

454 The above named defendants, the Louisville & Nashville Railroad Company; the Western Railway of Alabama, and the Atlanta & West Point Railroad Company pray an appeal from the decree rendered by this Court in the above entitled case on the second day of December, 1899, to

the United States Circuit Court of Appeals, for the Fifth Circuit, and said defendants having filed with the clerk of this Court their petition for appeal, together with an assignment of errors and an appeal bond, which bond has been duly approved, it is ordered, adjudged and decreed by the Court that said appeal be granted and allowed and that a transcript of the record and proceedings and papers upon which said decree was made duly authenticated be sent to the United States Circuit Court of Appeals for the Fifth Circuit.

The foregoing is hereby approved for entry this December 12, 1899. HARRY T. TOULMIN, U. S. District Judge.

Filed Dec'r 12, 1899, at 12:55 P. M.
RICHD. JONES, Clerk.

DEFENDANTS' APPEAL BOND.

In the Circuit Court of the United States for the Southern District of Alabama, at Mobile, Ala.

The Interstate Commerce Commission, Complainant.
vs. In Equity, No. 207.
The Louisville & Nashville Railroad Company; the Western Railway of Alabama; and the Atlanta & West Point Railroad Company, Defendants.

Know all men by these presents, that we, the Louisville & Nashville Railroad Company, the Western Railway of Alabama, and the Atlanta & West Point Railroad Company, as principals; and the Fidelity & Deposit Company of Maryland, of the City of Baltimore and State of Maryland, as surety, are held and firmly bound unto the above named, the Interstate Commerce Commission, in the sum of one thousand dollars, to be paid to the said Interstate Commerce Commission; for the
455 payment of which, well and truly to be made, we bind ourselves and each of us, our and each of our successors, heirs, executors and administrators, jointly and severally firmly by these presents.

Sealed with our seals, and dated the 12th day of December, in the year of our Lord, eighteen hundred and ninety-nine.

Whereas the above named, the Louisville & Nashville Railroad Company; the Western Railway of Alabama, and the Atlanta & West Point Railroad Company have prosecuted an appeal to the United States Circuit Court of Appeals for the Fifth

Circuit to reverse the decree rendered in the above entitled suit by the Circuit Court of the United States for the Southern District of Alabama, at Mobile, Alabama, on the second day of December, 1899.

Now therefore, the condition of this obligation is such that if the above-named, the Louisville & Nashville Railroad Company, the Western Railway of Alabama, and the Atlanta & West Point Railroad Company shall prosecute said appeal to effect, and answer all damages and costs, if they fail to make said appeal good, then this obligation shall be void; otherwise the same shall remain in full force and virtue.

THE LOUISVILLE & NASHVILLE RAILROAD COMPANY,
By ED. BAXTER, its Solicitor, [Seal]
THE WESTERN RAILWAY OF ALABAMA,
By ED. BAXTER, its Solicitor, [Seal]
THE ATLANTA & WEST POINT RAILROAD COMPANY,
By ED. BAXTER, its Solicitor, [Seal]
FIDELITY & DEPOSIT CO. OF MD., [Seal]
Per ALFRED PROSKAUER, their Atty. in fact,
[Seal of Fidelity and Deposit Co.]
D. P. COLEMAN & CO.,
Local Agts. Fidelity & Deposit Co. of Md.

Sealed and delivered and taken and acknowledged before me and approved by me this 12th day of December, 1899, at 12:55 o'clock P. M.

HARRY T. TOULMIN,
U. S. District Judge.

Filed Dec. 12, 1899, at 12:55 P. M., RICHD. JONES, Clerk.

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456 CITATION ON APPEAL.

United States of America, ss:

To the Interstate Commerce Commission—Greeting:

You are hereby cited and admonished to be and appear at the Court Room of the United States Circuit of Appeals for the Fifth Circuit at New Orleans, Louisiana, on the 11th day of January, nineteen hundred, pursuant to an appeal allowed and granted by the Circuit Court of the United States for the Southern District of Alabama, at Mobile, in the case of the Interstate Commerce Commission, as appellee, and the Louisville & Nashville Railroad Company, the Western Railway of Alabama, and

the Atlanta & West Point Railroad Company, as appellants, to show cause, if any there be, why the decree of said Circuit Court of the United States for the Southern District of Alabama, at Mobile, rendered on the second day of December, 1899, should not be corrected and speedy justice should not be done to the parties on that behalf.

Witness the Honorable Melville W. Fuller, Chief Justice of the United States, this 12th day of December, in the year of our Lord, eighteen hundred and ninety-nine.

HARRY T. TOULMIN,
U. S. District Judge.

Attest: RICHD. JONES,
[Seal] Clerk U. S. Circuit Court for the Southern District of Alabama.

I hereby accept service of this citation and acknowledge receipt of a copy thereof, this the 14th day of December, A. D. 1899.

L. A. SHAVER,
Solicitor for Interstate Com. Coms.

(Indorsement:) Original No. 207. U. S. Circuit Court, Sou. Dist. Alabama. United States, Ex rel, Interstate Commerce Commission vs. Louisville & Nashville Railroad Cop'y, et al. Citation of Appeal. Filed Decr. 16th, 1899. Richd. Jones, Clerk.

457 CERTIFICATE TO TRANSCRIPT.

United States of America.

Circuit Court of the United States for the Southern District of Alabama, Fifth Judicial Circuit, at Mobile, Alabama.

I, Richard Jones, Clerk of the Circuit Court of the United States for the Southern District of Alabama, do hereby certify that the foregoing 456 pages, numbered from 1 to 456, both inclusive, contain a full, true and correct copy of the record, assignment of errors and all proceedings in this Court in equity cause No. 207, wherein The Interstate Commerce Commission, is complainant, and the Louisville & Nashville Railroad Company, the Western Railway of Alabama, and the Atlanta & West Point Railroad Company, are defendants, as fully as the same appears from the records and file in said cause in my office as such clerk.

Witness my hand and the seal of said Circuit Court of the United States for the Southern District of Alabama, affixed at the City of Mobile, Alabama, this the first day of February, A. D. 1900.

RICHD. JONES,

[Seal] Clerk U. S. Circuit Court for the Southern District of Alabama.

Printed by E. S. UPTON, 451 Poydras
New Orleans, La.

423 United States circuit court of appeals for the fifth circuit.

November term, 1899. Monday, May 7th, 1900.

[Extract from minutes.]

LOUISVILLE & NASHVILLE RAILROAD COMPANY ET ALS. vs. THE INTERSTATE COMMERCE COMMISSION. } No. 910.

This cause was regularly called this day, and submitted to the court after argument by Mr. Ed Baxter for appellants and by Mr. L. A. Shaver for appellee.

November term, 1900. May 14, 1901.

[Extract from minutes.]

THE LOUISVILLE NASHVILLE RAILROAD COMPANY ET AL. vs. THE INTERSTATE COMMERCE COMMISSION. } No. 910.

This cause came on to be heard on the transcript of the record from the circuit court of the United States for the southern district of Alabama, and was argued by counsel.

On consideration whereof it is now here ordered, adjudged, and decreed by this court, that the decree of the said circuit court in this cause be, and the same is hereby, remanded to said circuit court, with instructions to set aside its decree adjudging that the order of the Commission be enforced, and dismiss the application made for that purpose with costs, the whole to be without prejudice to the right of the Commission to proceed upon the evidence already introduced before it, or upon such further pleadings and evidence as it may allow to be made or introduced, to hear and determine the controversy according to law.

424 United States circuit court of appeals for the fifth circuit. November term, 1900.

THE LOUISVILLE AND NASHVILLE RAILROAD COMPANY, the Western Railway of Alabama, and the Atlanta and West Point Railroad Company, appellants, v. THE INTERSTATE COMMERCE COMMISSION, APPELLEE. } No. 910.

Petition for rehearing.

The Interstate Commerce Commission, appellee in the above-named cause, respectfully petitions the court for the vacation of the order or decree therein made May 14, 1901, and for a rehearing thereof on the following grounds:

425 1. Said order or decree of the court remands said cause to the circuit court "with instructions to set aside its decree adjudging that

the order of the Commission be enforced, and dismiss the application made for that purpose, with costs, the whole to be without prejudice to the right of the Commission to proceed upon the evidence already introduced before it, or upon such further pleadings and evidence as it may allow to be made or introduced, to hear and determine the controversy according to law," and as precedent or authority for this order cites the "opinions of the Supreme Court of the United States in Interstate Commerce Commission *v.* The Clyde Steamship Company et als. and The East Tennessee, Virginia and Georgia Railway Company et als. *v.* The Interstate Commerce Commission, recently decided, not yet reported."

2. In the two cases cited in the order or decree of this court, and also in Louisville and Nashville Railroad Company *v.* Behlmer (175 U. S., 648), the Supreme Court made the same order as is made by this court in the present case, but the ground upon which the Supreme Court made the order in the cases named does not exist in the present case.

3. In the said cases cited by this court and in the Behlmer case (supra) the Commission refused to consider competition by carriers subject
426 to the act to regulate commerce, as constituting the substantial dissimilarity of circumstances and conditions which would take a case from under the rule of section 4 of the act, on the ground that such competition could not be considered by them except on application by the carriers under the proviso to the fourth section of the act for relief from the rule of that section.

The ruling of the Commission on this point, in the opinion of the Commission in Georgia Railroad Commission v. Clyde Steamship Company et al., one of the cases cited by this court in the order in this case, and quoted by the Supreme Court in East Tennessee, Virginia and Georgia Railway Company v. Interstate Commerce Commission, the other case cited by this court in its order in this case, was thus stated by the Commission:

"The carrier has the right to judge in the first instance whether it is justified in making the greater charge for the shorter distance under the fourth section, in all cases where the circumstances and conditions arise wholly upon its own line or through competition for the same traffic with carriers *not subject to regulation under the act to regulate commerce.* In other cases under the fourth section" (that is, cases of competition by carriers subject to the act) "the circumstances and conditions are not *presumptively* dissimilar and the carriers must not charge less for the longer distance *except under the order of the Commission.*" (That is, order of Commission on application to the Commission for relief under the proviso to the fourth section.) (Italics mine.)

427 The Supreme Court in Interstate Commerce Commission v. Alabama Midland Railway Company (168 U. S., 144, 164) held that this construction of the law by the Commission was erroneous, and this ruling was reaffirmed by the Supreme Court in the two cases cited by this court in its order in this case and in the Behlmer case (supra).

The Supreme Court further held in the three last-named cases that because of this erroneous construction of the law the Commission had unduly restricted its inquires into the facts, and that, inasmuch as "the defendant was entitled to have its defense considered, in the first instance at least, by the Commission, upon a full consideration of all the circumstances and conditions upon which a legitimate order could be founded,"

the cases should be remanded to the circuit court with instructions to that court to set aside its decree and to dismiss the application of the Commission for the enforcement of its order, "the whole to be without prejudice to the right of the Commission to proceed upon the evidence already introduced before it or upon such further pleadings and evidence as it may allow to be made or introduced, to hear and determine the matter in controversy according to law."

This order was based solely upon the ground that the Commis-
428 sion had unduly restricted its inquiries into the facts because of its mistaken view of the law, and that thereby injury has been done the defendant who was, in the language of the court, "entitled to have its defense considered, in the first instance at least, by the Commission upon a full consideration of all the circumstances and conditions upon which a legitimate order could be founded."

4. The present case was decided by the Commission December 31, 1897, nearly two months after the decision of the Supreme Court in Interstate Commerce Commission v. Alabama Midland Railway Company (supra), holding that the Commission had erred as above stated, and the Commission, being advised of the latter decision, did not in the present case repeat its said error.

An examination of the opinion of the Commission in this case shows that it did not unduly restrict its inquiries as to any matter presented for its consideration, either by the pleadings or testimony, and that in particular it fully considered competition of every character set up. This will appear from the following extracts from its opinion:

"It remains to be determined under this branch of the case whether competition at Atlanta causes transportation of freight by the defendants from New Orleans to Hogansville, Newnan, Palmetto, or Fairburn to be conducted under circumstances and conditions which are sub-
429 stantially dissimilar from those which affect the transportation of like traffic from New Orleans to Lagrange. *This includes both the competition of markets for supplying goods to Atlanta and the competition of carriers for the carriage of freights to that point* from New Orleans and from Western, Northern, and Northeastern cities." (Italics mine.) (Opinion of the Commission, p. 6.)

The Commission announced its conclusion as to competition in the following language:

"*Having fully considered all the evidence and material facts and given due weight to the competition of carriers and of markets for Atlanta trade*, together with the fair interests of the defendant carriers, the interests, of the communities involved and those of the complainants and other dealers (the Import Rate case—*Texas and P. R. Co.* v. *I. C. C.*, 162 U. S., 197; *I. C. C.* v. *Alabama Midland Railway Co.*, 168 U. S., 144), we find and hold that transportation of freights by defendants from New Orleans to Lagrange and the transportation of like freight from New Orleans to Fairburn are under substantially similar circumstances and conditions; and that the same is true as to such transportation by defendants to Lagrange and Hogansville, Lagrange and Newnan, and Lagrange and Palmetto." (Italics mine.) (Opinion of the Commission, p. 8.)

5. This case does not belong to the class of cases in which the Supreme Court made orders such as that made by this court in the present case.

The Commission has already in this case "heard and determined the matter in controversy according to law" in the sense of those words as used by the Supreme Court.

Respectfully submitted.

L. A. SHAVER,
Solicitor for the Appellee.

430 I, L. A. Shaver, counsel for the Interstate Commerce Commission, appellee in the above-stated cause, hereby certify that the foregoing petition for a rehearing is not interposed for delay and that the same is, in my judgment, well founded. This the 23d day of May, 1901.

L. A. SHAVER,
Solicitor for the Appellee.

(Endorsed:) Filed May 27, 1901. J. M. McKee, clerk.

431 November Term, 1901. November 26th, 1901.

[Extract from Minutes.]

LOUISVILLE & NASHVILLE RAILROAD COMPANY, et al.,
v.
INTERSTATE COMMERCE COMMISSION. } No. 910.

Ordered that the petition for rehearing filed in this cause be, and the same is, hereby denied.

432 In the United States circuit court of appeals for the fifth circuit.

THE LOUISVILLE & NASHVILLE RAILROAD Company, The Western Railway of Alabama, and The Atlanta & West Point Railroad Company,
vs.
THE INTERSTATE COMMERCE COMMISSION. } In equity, No. 910. November term, 1900.

Petition for appeal.

The Interstate Commerce Commission being a bureau or department of the Government of the United States, by William Wirt Howe, United States attorney, under the direction of the Attorney-General of the United States, represents that in the final decree or order of said circuit court of appeals in the above-stated case, rendered on the 14th day of May, 1901, there is manifest error to its injury; and therefore it prays for an order granting an appeal from said decree to the Supreme Court of the United States.

W. W. HOWE,
United States Attorney for the Eastern District of Louisiana.

L. A. SHAVER,
Of Counsel for the Interstate Commerce Commission.

(Endorsed:) Petition for appeal. Filed December 9, 1901. Charles H. Lednum, clerk.

433 In the United States circuit court of appeals for the fifth circuit.
November term, 1900.

THE LOUISVILLE & NASHVILLE RAILROAD COMPANY, The Western Railway of Alabama, and The Atlanta & West Point Railroad Company
vs.
THE INTERSTATE COMMERCE COMMISSION.
} In equity, No. 910.

Order allowing appeal.

In this cause, the Interstate Commerce Commission, by William Wirt Howe, United States Attorney, under the direction of the Attorney-General of the United States, having made its application in writing for an appeal from the final decree therein rendered on the 14th day of May, 1901, to the Supreme Court of the United States, and the said Interstate Commerce Commission being a department of the Government of the United States, and it appearing that the matter in dispute in said cause exceeds the sum of five thousand dollars ($5,000.00), exclusive of costs, it is, therefore, ordered that said appeal be, and the same is, hereby granted and made returnable on the eighth day of January, 1902.

DON A. PARDEE, *Circuit Judge.*

DEC. 9th, 1901.

(Endorsed:) Order allowing appeal. Filed December 9, 1901. Charles H. Lednum, clerk.

434 In the United States circuit court of appeals for the fifth circuit.
November term, 1900.

THE LOUISVILLE & NASHVILLE RAILROAD COMPANY, The Western Railway of Alabama, and The Atlanta & West Point Railroad Company
vs.
THE INTERSTATE COMMERCE COMMISSION.
} No. 910.

Assignment of errors.

And now comes the Interstate Commerce Commission, by William Wirt Howe, United States attorney for the eastern district of Louisiana, and by L. A. Shaver, of counsel for said Commission, and charges that in the order made by said circuit court of appeals in the above-entitled cause on the 14th day of May, 1901, and in the record and proceedings in said cause there is manifest error to its injury in this, to wit:

1. Said circuit court of appeals erred in not affirming the decree of the circuit court of the United States for the southern district of Alabama adjudging that the order of the Commission be enforced against the Louisville & Nashville Railroad Company, the Western Railway of Alabama, and the Atlanta & West Point Railroad Company.

2. Said circuit court of appeals erred in remanding said cause to said circuit court "with instructions to set aside its decree adjudging that said order of the Commission be enforced and dismissed the application made for that purpose with costs, the whole to be without prejudice to the right of the Commission to proceed upon the evidence already introduced before it or upon such further pleadings and evidence as it may allow to be made or introduced to hear and determine the controversy according to law."

435 3. Said circuit court of appeals erred in refusing or failing to consider and determine said cause upon its merits as disclosed by the testimony and record therein.

4. Said circuit court of appeals erred in holding in effect that the same order should be made in said cause as was made by the Supreme Court of the United States in Interstate Commerce Commission vs. The Clyde Steamship Company et als. (181 U. S., 29), and in East Tennessee, Virginia & Georgia Railway Company et al vs. The Interstate Commerce Commission (181 U. S., 1).

5. Said circuit court of appeals erred in making the same order in said cause as was made by the Supreme Court of the United States in Interstate Commerce Commission vs. Clyde Steamship Company et al. (181 U. S., 29), and in East Tennessee, Virginia & Georgia Railway Company et al. vs. The Interstate Commerce Commission (181 U. S., 1).

W. W. HOWE,
United States Attorney for the Eastern District of Louisiana.
L. A. SHAVER,
Of counsel for the Interstate Commerce Commission.

(Endorsed:) Assignment of errors. Filed December 9, 1901. Charles H. Lednum, clerk.

436 L. & N. R. R. Co. ET AL. v. INTERSTATE COMMERCE COM'N. } No. 910 in U. S. C. C. of Ap.

Citation on appeal.

THE UNITED STATES OF AMERICA, FIFTH JUDICIAL CIRCUIT.

The President of the United States to the Louisville and Nashville Railroad Company, the Western Railway of Alabama, and the Atlanta and West Point Railroad Company, or to Ed. Baxter, their solicitor of record, greeting:

You are hereby cited and admonished to be and appear before the Supreme Court of the United States at Washington, D. C., within thirty days from the date hereof, pursuant to the appeal sued out and filed in the clerk's office in the United States circuit court of appeals for the fifth circuit, in the cause wherein the Interstate Commerce Commission was appellee and you were appellants, to show cause, if any there be, why the order made against the said Interstate Commerce Commission, as in said petition for appeal mentioned, should not be corrected and why speedy justice should not be done in that behalf.

Witness the Hon. Don A. Pardee, United States circuit judge for the fifth judicial circuit, this the 9th day of December, in the year of our Lord one thousand nine hundred and one.

DON A. PARDEE,
Circuit Judge.

I hereby accept service of the above citation.

ED. BAXTER,
Solicitor for Appellees as shown of Record.

Filed December 19, 1901. Charles H. Lednum, clerk.

437 (Indorsed:) U. S. circuit court of appeals. Filed May 14, 1901. J. M. McKee, clerk.

United States circuit court of appeals, fifth circuit, November term, 1900.

THE LOUISVILLE & NASHVILLE RAILROAD COMPANY, The Western Railway of Alabama and The Atlanta & West Point Railroad Company, appellants,
v.
THE INTERSTATE COMMERCE COMMISSION, appellee. } No. 910.

Appeal from the circuit court of the United States for the southern district of Alabama.

Before Pardee, McCormick and Shelby, circuit judges.

By the COURT.

Considering the opinions of the Supreme Court of the United States in Interstate Commerce Commission v. The Clyde Steamship Company, et als., and The East Tennessee, Virginia & Georgia Railway Company, et als., v. The Interstate Commerce Commission, recently decided, not yet reported, this case is remanded to the circuit court with instructions to set aside its decree adjudging that the order of the Commission be enforced and dismiss the application made for that purpose with costs, the whole to be without prejudice to the right of the Commission to proceed upon the evidence already introduced before it, or upon such further pleadings and evidence as it may allow to be made or introduced, to hear and determine the controversy according to law.

438 United States circuit court of appeals for the fifth circuit.

I, Charles H. Lednum, clerk of the United States circuit court of appeals for the fifth circuit, do hereby certify that the foregoing 438 pages, numbered from a to 437, inclusive, contain a true copy of the record assignment of errors, and all proceedings had, including the opinion of the court in the case of The Louisville & Nashville Railroad Company et al., vs. Interstate Commerce Commission, No. 910, as the same remains upon the files and records of said United States circuit court of appeals.

In testimony whereof I hereunto subscribe my name and affix the seal of said United States circuit court of appeals, at the city of New Orleans, this 20th day of December, A. D. 1901.

[SEAL.] CHARLES H. LEDNUM,
Clerk of the United States Circuit Court of Appeals for the Fifth Circuit.

439 (Indorsement on cover:) File No. 18359. U. S. circuit court of appeals, 5th circuit. Term No. 506. The Interstate Commerce Commission, appellant, vs. The Louisville & Nashville Railroad Company, The Western Railway of Alabama, and The Atlanta & West Point Railroad Company. Filed December 30, 1901. In the Supreme Court of U. S. Received Dec. 30, 1901.

○

FILE COPY.

Office Supreme Court U. S.
FILED
APR 1 1903
JAMES H. McKENNEY,
Clerk.

In the Supreme Court of the United States.

OCTOBER TERM, 1902.

The Interstate Commerce Commission, *Appellant*,

v.

The Louisville and Nashville Railroad Company, the Western Railway of Alabama, and the Atlanta and West Point Railroad Company, *Appellees.*

No. 214.

APPEAL FROM THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE FIFTH CIRCUIT.

ARGUMENT FOR THE APPELLANT.

L. A. SHAVER,
Solicitor.

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ABBREVIATIONS.

The following abbreviations are used in this argument:

Rec. = Printed transcript of record.

I. C. C. = Interstate Commerce Commission.

Ans. = Answer.

In the Supreme Court of the United States.

OCTOBER TERM, 1902.

The Interstate Commerce Commission, *Appellant,* v. **The Louisville and Nashville Railroad Company, The Western Railway of Alabama, and The Atlanta and West Point Railroad Company,** *Appellees.*	No. 214.

APPEAL FROM THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE FIFTH CIRCUIT.

ARGUMENT FOR THE APPELLANT.

CHAPTER I.

Statement of case.

This case originated from a complaint made to the Interstate Commerce Commission, under section 13 of the act to regulate commerce, by Fuller E. Callaway, a merchant of Lagrange, Ga., against the defendants, the Louisville and Nashville Railroad Company, the Western Railway of Alabama, and the Atlanta and West Point Railroad Company, forming a line from New Orleans, via Mobile, Montgomery, Opelika, and West Point, to *Lagrange*, *Hogansville*, *Newnan*, *Palmetto*, *Fairburn*, and *Atlanta*.

The complaint was—

First. That the rates of the defendants from New Orleans to Lagrange were *excessive or unreasonably high* in themselves, and therefore in violation of *section 1* of the act to regulate commerce, which requires all rate charges to be just and reasonable.

Second. That the rates of the defendants from New Orleans to Lagrange, and from New Orleans, through Lagrange, to Hogansville, Newnan, Palmetto, Fairburn, and Atlanta, were unduly prejudicial to Lagrange and unduly preferential to Atlanta and the other points named, and therefore in violation of *section 3* of the act to regulate commerce, which, among other things, prohibits undue preferences in rates as between *different localities.*

Third. That the rates of the defendants from New Orleans to Lagrange were in violation of the rule of *section 4* of the law, which forbids the exaction, "under substantially similar circumstances and conditions," of a greater charge for a shorter than a longer haul over the same line in the same direction, the shorter being included within the longer. This charge was based upon the admitted fact that the rates to Lagrange are materially higher than the rates for the longer haul through Lagrange, 13 miles on to Hogansville; 32 miles on to Newnan; 46 miles on to Palmetto; 53 miles on to Fairburn, and 71 miles on to Atlanta.

(See complaint of Callaway, Exhibit A to bill of complaint; Rec., 7.)

The Commission, after due investigation, found that these three charges were sustained, and, as required by section 14 of the law, "made a report in writing in respect thereto, including the findings of fact upon which the conclusions of the Commission were based." (See Exhibit C to bill of complaint; Rec., 25–48.) The "findings of fact in the report of

the Commission" are made "*prima facie evidence* of the matters therein stated." (Sections 14, 16 of the law.)

The Commission also, as required by section 15 of the law, issued an order or notice to the defendants to cease and desist from violating the law in the respects named. (See order of Commission, Exhibit D to bill of complaint; Rec., 48–51.)

The defendants refused to obey this order of the Commission, and thereupon the Commission, as authorized by section 16 of the law, instituted the present proceeding in equity in the circuit court of the United States for the southern district of Alabama, praying the enforcement of its order, and "*for such other and further relief in the premises as might seem meet, and equity might require.*"

Pleadings in court.

The bill of complaint filed in said circuit court by the Commission *reaffirms* the three charges set forth in the complaint before the Commission, namely, that the rates of the defendants are in violation of sections 1, 3, and 4 of the law.

(Paragraph X of bill of complaint; Rec., 4.)

The defendants, in their joint and several answer, traverse these three charges, and allege that their rates are in conformity with the law.

(Rec., 8–23.)

Action of the courts.

The circuit court sustained the order of the Commission, and rendered a decree enjoining the defendants from its violation.

The defendants appealed from the decree of the circuit court to the United States circuit court of appeals for the fifth circuit, and that court reversed the decree of the circuit court and rendered a decree remanding the case to the circuit court "with instructions to set aside its decree adjudging

that the order of the Commission be enforced and dismiss the application made for that purpose with costs, *the whole to be without prejudice to the right of the Commission to proceed upon the evidence already introduced before it, or upon such further pleadings and evidence as it may allow to be made or introduced, to hear and determine the controversy according to law.*" (Rec., p. 429.) (See Chapter XLVIII of this Argument.)

The Interstate Commerce Commission duly filed a petition for rehearing, which was denied (Rec., 423–426), and the case is now in this court on appeal by the Interstate Commerce Commission from said decree of the circuit court.

CHAPTER II.

Assignment of Errors.

The following are the errors assigned:

1. Said circuit court of appeals erred in not affirming the decree of the circuit court of the United States for the southern district of Alabama adjudging that the order of the Commission be enforced against the Louisville and Nashville Railroad Company, the Western Railway of Alabama, and the Atlanta and West Point Railroad Company.

2. Said circuit court of appeals erred in remanding said cause to said circuit court "with instructions to set aside its decree adjudging that said order of the Commission be enforced and dismiss the application made for that purpose with costs, the *whole to be without prejudice to the right of the Commission to proceed upon the evidence already introduced before it or upon such further pleadings and evidence as it may allow to be made or introduced to hear and determine the controversy according to law.*"

3. Said circuit court of appeals erred in refusing or failing to consider and determine said cause upon its merits as disclosed by the testimony and record therein.

4. Said circuit court of appeals erred in holding in effect that the same order should be made in said cause as was made by the Supreme Court of the United States in Interstate Commerce Commission *v.* The Clyde Steamship Company et al. (181 U. S., 29), and in East Tennessee, Virginia and Georgia Railway Company et al. *v.* The Interstate Commerce Commission (181 U. S., 1). (*See Chap. XLVIII of this Argument and Petition for Rehearing, Rec., pp., 423–426.*)

5. Said circuit court of appeals erred in making the same order in said cause as was made by the Supreme Court of the United States in Interstate Commerce Commission *v.* Clyde Steamship Company et al. (181 U. S., 29), and in East Tennessee, Virginia and Georgia Railway Company et al. *v.* The Interstate Commerce Commission (181 U. S., 1).

CHAPTER III.

The rates in question.

(1) Class rates.

(2) Rates on sugar, molasses, and rice.

The rates in question are, as before stated, rates from New Orleans to Lagrange and Atlanta, and also to stations between Lagrange and Atlanta, to wit, Hogansville, Newnan, Palmetto, and Fairburn. They are *class rates;* that is, the rates on the six numbered and the five lettered classes, and also rates on *sugar, molasses, and rice.*

(1) Class rates.

The class rates from New Orleans to the above-named points and *also to Opelika* in cents per hundred pounds, except Class F, which is per barrel, are shown in the table below:

Class rates from New Orleans, La.

Distances.		Classes.												Per barrel.
Miles.	To—	1.	2.	3.	4.	5.	6.	A.	B.	C.	D.	E.	H.	F.
625	Lagrange	143	124	109	93	74	59	51	48	33½	29	66	74	59
558	Hogansville	138½	121	106½	90½	73	57½	39½	46½	33	28½	65	75½	56
457	Newnan	132½	114½	101	86	69½	55	37	44	32	27½	61½	71	56
471	Palmetto	127	110	97	81½	66½	54	36	43	31½	27	58½	66½	55
478	Fairburn	125	108	94½	79½	65	53	35	42	31	26½	57	64½	54
496	Atlanta	103	88	77	64	52	42	31	31	24	20	44	49	40
387	Opelika	103	88	77	64	52	42	24	33	26	22	46	51	44

All the above class rates, it will be observed, are materially higher to the shorter distance point—Lagrange—than for the haul through Lagrange to the longer distance points—Hogansville, Newnan, Palmetto, Fairburn, and Atlanta. The attention of the court is called, for the purpose of illustration, to the disparity in the rates on *first-class* goods. Those rates are, as shown below, *in cents per hundred pounds:*

To Hogansville	139½	To Lagrange	14
To Newnan	132½		
To Palmetto	127		
To Fairburn	125		
To Atlanta	103		

EXCESS OF CLASS 1 RATES TO LAGRANGE OVER CLASS 1 RATES TO LONGER DISTANCE POINTS, IN CENTS PER 100 POUNDS.

Lagrange rate exceeds Hogansville rate, 3½ cents.

Lagrange rate exceeds Newnan rate, 10½ cents.

Lagrange rate exceeds Palmetto rate, 16 cents.

Lagrange rate exceeds Fairburn rate, 18 cents.

Lagrange rate exceeds Atlanta rate, 40 cents.

The minimum carload weight allowed under the Southern freight classification, which applies to the traffic involved in this case, is 24,000 pounds, and the excess in dollars and cents of the rate per minimum carload on all the classes to Lagrange over the rates per minimum carload to Hogansville, Newnan, Palmetto, Fairburn, and Atlanta, is as shown in the following table:

Statement showing the excess per carload of 24,000 pounds of the class rates from New Orleans, La., to Lagrange, over the rates to Hogansville, Newnan, Palmetto, Fairburn, and Atlanta, Ga.

Classes.	From New Orleans, La., to Lagrange, Ga., higher than the rates to the following points by following amounts, viz:				
	Hogansville, Ga.	Newnan, Ga.	Palmetto, Ga.	Fairburn, Ga.	Atlanta, Ga.
1	$8.40	$25.20	$38.40	$43.20	$96.00
2	7.20	22.80	33.60	38.40	86.40
3	6.00	19.20	28.80	34.80	76.80
4	6.00	16.80	27.60	32.40	69.60
5	2.40	10.80	18.00	21.60	52.80
6	3.60	9.60	12.00	14.40	40.80
A	3.60	9.60	12.00	14.40	40.80
B	3.60	9.60	12.00	14.40	40.80
C	1.20	3.60	4.80	6.00	22.80
D	1.20	3.60	4.80	6.00	21.60
E	2.40	10.80	18.00	21.60	52.80
H	.....	7.20	18.00	22.80	60.00
F	2.40	7.20	9.60	12.00	55.60

Rates on sugar, molasses, and rice.

While traffic embraced in the classes (1, 2, 3, 4, 5, 6, A, B, C, D, E, H, F), and to which the above rates are applied, is transported by the defendants from New Orleans to Lagrange and the other points named, the commodities constituting the bulk of the freight so transported are *sugar, molasses, and rice.* The rates on sugar, molasses, and rice *in cents per hundred pounds* are given in the following table:

Rates on sugar, molasses, and rice from New Orleans.

[The abbreviations "C. L." and "L. C. L." stand, respectively, for carloads and less than carloads.]

To—	Sugar in barrels.		Taking sixth class.		Molasses in kegs.		Molasses in barrels or hogsheads.		Rice in barrels, any quantity.	Rice in kegs any quantity.
			Sugar, except in barrels.							
	C. L.	L. C. L.	C. L.	L. C. L.	C. L.	L. C. L.	C. L.	L. C. L.		
Lagrange	37	40	40	40	57	57	37	37	34½	36½
Hogansville	35½	38½	.....	.....	51½	51½	36	36	34	54½
Newnan	33	36	.....	.....	47	47	34	34	33	49
Palmetto	32	35	.....	.....	42½	42½	32	32	32½	45
Fairburn	31	34	.....	.....	40½	40½	31½	31½	32	42½
Atlanta	20	23	23	23	25	25	25	25	25	25
Opelika	20	23	23	23	25	25	25	25	25	25

The rates on sugar, molasses, and rice from New Orleans to Lagrange are, it will be seen, materially higher than the rates on those commodities to Hogansville, Newnan, Palmetto, Fairburn, and Atlanta. We give below the excess of the Lagrange rates on sugar over the rates to the other points named in cents *per hundred pounds:*

Lagrange rate on sugar exceeds Hogansville rate 1½ cents.

Lagrange rate on sugar exceeds Newnan rate 4 cents.

Lagrange rate on sugar exceeds Palmetto rate 5 cents.

Lagrange rate on sugar exceeds Fairburn rate 6 cents.

Lagrange rate on sugar exceeds Atlanta rate 17 cents.

THE LAGRANGE RATE ON SUGAR OF 37 CENTS PER 100 POUNDS LACKS ONLY 3 CENTS OF BEING DOUBLE THE ATLANTA RATE OF 20 CENTS.

The Lagrange rate on sugar, etc., *per minimum carload of 24,000 pounds* exceeds the rates to Hogansville, Newnan, Palmetto, Fairburn, and Atlanta, as shown below:

Statement showing the excess per car of 24,000 pounds of the rates on sugar, molasses, and rice, from New Orleans, La., to Lagrange, over the rates to Hogansville, Newnan, Palmetto, Fairburn, and Atlanta, Ga.

From New Orleans, La., to Lagrange, Ga., higher than the rates to the following points, by the following amounts, viz:	Rates in dollars and cents per carload of 24,000 pounds.								
	Sugar in barrels.		Taking sixth class. Sugar except in barrels.		Molasses in kegs.		Molasses in barrels or hogsheads.		Rice in barrels, any quantity.	Rice in kegs, any quantity.
	C. L.	L. C. L.	C. L.	L. C. L.	C. L.	L. C. L.	C. L.	L. C. L.		
Hogansville, Ga..	$3.60	$3.60	.....	.....	$13.20	$13.20	$2.40	$2.40	$1.20	$48.00
Newnan, Ga.....	9.60	9.60	.....	.....	24.00	24.00	7.20	7.20	3.60	37.20
Palmetto, Ga	12.00	12.00	.....	.....	34.80	34.80	12.00	12.00	4.80	27.60
Fairburn, Ga	14.40	14.40	.....	.....	39.60	39.60	13.20	13.20	6.00	19.20
Atlanta, Ga.....	40.80	40.80	$40.80	$40.80	76.80	76.80	28.80	28.80	22.80	22.80

It will be noted that we have given the excess of the rates to the shorter-distance point, Lagrange, on *minimum* carloads of 24,000 pounds. *The excess on a larger or average carload will be much greater.*

Lagrange the shorter distance point.

While the Lagrange rates thus exceed the rates to the other points named, the distances or lengths of the hauls to those other points exceed the length of the haul to Lagrange as follows:

Lagrange, shorter haul than Hogansville by *13 miles.*

Lagrange, shorter haul than Newnan by *32 miles.*

Lagrange, shorter haul than Palmetto by *46 miles.*

Lagrange, shorter haul than Fairburn by *53 miles*.

Lagrange, shorter haul than Atlanta by *71 miles*.

The line involved in this case the short line.

The line involved in this case, made up of the defendants, the Louisville and Nashville Railroad, the Western Railway of Alabama, and the Atlanta and West Point Road, extending from New Orleans via Mobile and Montgomery through Lagrange to Atlanta, is shown on the annexed diagram. *This line is the shortest and most practicable line from New Orleans to Lagrange, Hogansville, Newnan, Palmetto, Fairburn, and Atlanta, and the bulk of the traffic transported from New Orleans to those points passes over this line.*

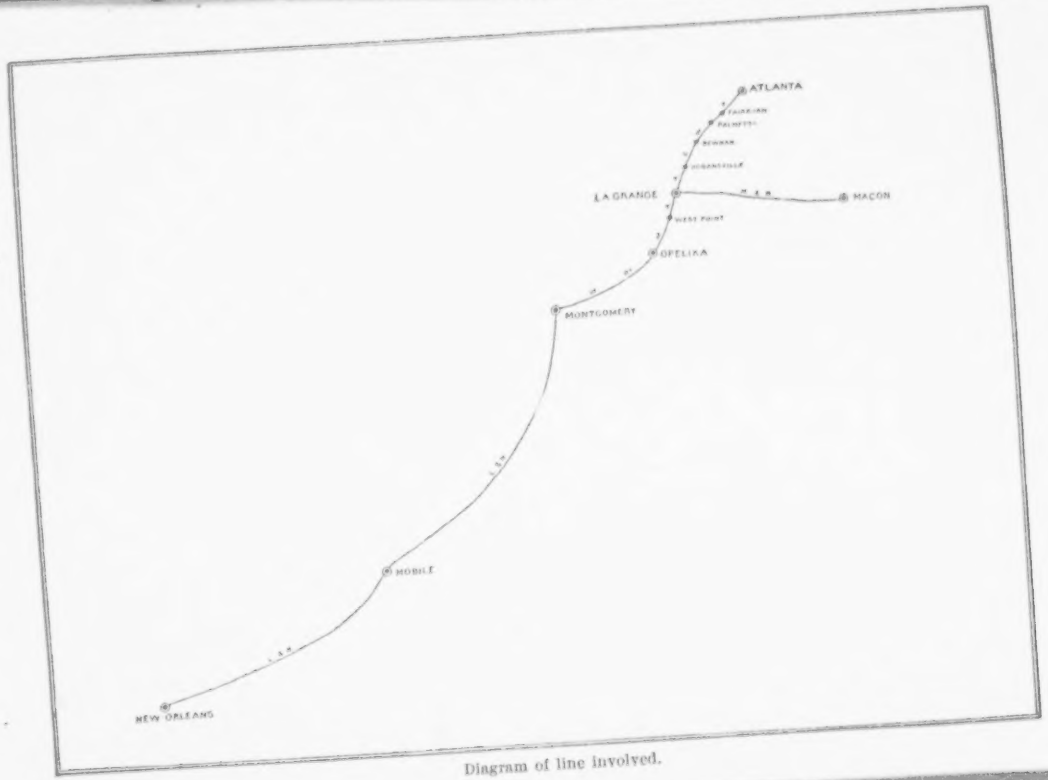


Diagram of line involved.

CHAPTER IV.

The plea of competition.

The discrimination against Lagrange not only in favor of the competitive point, Atlanta, but also of the noncompetitive or local points, Hogansville, Newnan, Palmetto, and Fairburn.

Answers to the plea of competition.

The discrimination against Lagrange, shown by the rates set forth in the preceding chapter, is not only in favor of Atlanta, but also of Hogansville, Newnan, Palmetto, and Fairburn. The sole plea of the defendants, however, in justification of the discrimination against Lagrange in favor of all of these points is *competition encountered at Atlanta.*

Atlanta is what is termed a *competitive point*, but Hogansville, Palmetto, and Fairburn are what are known as *strictly local stations.* This discrimination against Lagrange *in favor of these longer distance strictly local stations* distinguishes this case from any other case heretofore brought before the courts. The present case is also distinguishable in other material respects from other cases, *a matter to which the attention of the court will be called at some length further on in this argument.* (See Chapter XLIV.)

Answers to the plea of competition.

In answer to the plea of competition, the main propositions for which we shall contend are:

First. That the rates to Lagrange are in themselves *excessive* or *unreasonably high*, and that competition can not justify rates excessive or otherwise unreasonable in themselves, and therefore violative of section 1 of the law, which requires all rate charges to be just and reasonable in themselves.

Second. That competition can, in any event, only justify rates to a local noncompetitive point which are the lowest combination; that is, the combination of the through rates to the *nearest* competitive point plus the rates from such competitive point to the local noncompetitive point; and that consequently *the Lagrange rates should be based on Opelika, Opelika being the nearest competitive point to Lagrange, and not on Atlanta.*

Third. That the rates to Atlanta are either *reasonably high or unreasonably low*, and that—

(*a*) If the Atlanta rates are reasonably high, notwithstanding the competition at Atlanta, then such competition is no justification for the materially higher rates for the shorter haul to Lagrange; and that—

(*b*) If the Atlanta rates have been made unreasonably low in consequence of the competition at Atlanta, then there is a deficiency under those rates which is made up by increasing the rates to Lagrange and other points denied competitive rates, and that this placing of a burden upon traffic to Lagrange which should be borne by traffic to Atlanta is unlawful. (*Smyth* v. *Ames*, known as the "*Nebraska Maximum Rate Case*," 169 U. S., 541; E. T., etc., Ry. Co. *v.* I. C. C., 181 U. S., top p. 20.)

Fourth. That the Atlanta rates were established by *agreement* between the carriers, and are, therefore, not the result of competition.

Fifth. That conceding for argument's sake some dissimilarity of condition as between Lagrange and Atlanta has been shown, *it does not justify discrimination to the extent proven*, and that making the Lagrange rates as high as the Atlanta rates, which can be done under the order of the Commission, will be a reasonable allowance for any dissimilarity of condition resulting from such competition.

Sixth. That the means of competition exist at Lagrange as well as at Atlanta, and that if the carriers reaching Lagrange do not compete, this is their own voluntary action and can not justify discrimination against Lagrange.

Seventh. That the means of competition at Lagrange are greater than at Hogansville, Palmetto, and Fairburn, Lagrange being located on two distinct roads, while Hogansville, Palmetto, and Fairburn are only on one, and that competition at Atlanta can not justify discrimination against Lagrange in favor of Hogansville, Palmetto, or Fairburn—in other words, can not justify higher rates for the shorter haul to Lagrange than for the longer hauls through Lagrange to Hogansville, Palmetto, and Fairburn.

Eighth. That Lagrange and Newnan are both on two roads, and there is no excess of competition at Newnan over that at Lagrange, shown in this case, which can justify discrimination against Lagrange and in favor of Newnan—in other words, higher rates for the shorter haul to Lagrange than for the longer haul through Lagrange to Newnan.

CHAPTER V.

Excessiveness of Lagrange rates.

Competition can not justify rates excessive in themselves, in violation of section 1 of the law.

Grounds upon which the Lagrange rates are claimed to be excessive.

Our first proposition in answer to the plea of competition is that the Lagrange rates are in themselves excessive or unreasonably high, and that competition can not justify rates in themselves excessive.

The proposition that competition can not justify rates excessive in themselves is admitted by counsel for the carriers.

Section 1 of the law requires all rate charges to be just and reasonable in themselves. In the "Alabama Midland case" this court holds that competition may be set up as a defense under sections 3 and 4 of the law; but neither this court nor any other court has held that competition may, while being set up as a defense under sections 3 and 4, indirectly set aside the fundamental provision of section 1, that all rate charges shall be just and reasonable.

In Louisville, etc., R. Co. *v.* Behlmer, this court says:

> While the carrier may take into consideration the existence of competition as the producing cause of dissimilar circumstances and conditions, his right to do so is governed by the following principles: First. *The absolute command of the statute that all rates shall be just and reasonable.* * * *
>
> (175 U. S., bot. p. 674.)

We give below a SUMMARY OF THE GROUNDS upon wh
we claim that the Lagrange rates are excessive:

First. The *average* of the rates per ton per mile yielded
the Lagrange rates are from three to five times higher t
the *average* revenue per ton per mile of roads through
the United States, and particularly in Southern territo
(Chap. VI, *infra.*)

Second. The rates for the haul of *425 miles* from N
Orleans to Lagrange are *over 30 per cent higher* than
standard maximum rates for *430 miles* established by
Georgia railroad commission, even when those rates
increased by the addition of 10 per cent allowed the Atla
and Westpoint road. (Chap. VII, *infra.*)

Third. The rates for the haul of *425 miles* from N
Orleans to Lagrange are *over 30 per cent higher* than
rates for a distance of *425 miles* under the local-distance ta
of the Illinois Central Railway Company (southern divisio
issued May 18, 1897, and effective June 1, 1897. (Rec., 2

Fourth. The rates for the haul *of 425 miles* from N
Orleans to Lagrange are very much higher than the ra
for a distance *of 430 miles* under the joint freight tariff
the Southern Railway Company, issued March 2, 1898,
effective March 5, 1898. (Rec., 248.)

Fifth. The rates for the haul *of 425 miles* from N
Orleans to Lagrange are very much higher than the rates
distances of over 300 miles under local freight tariff No. 1
(Western System) of the Southern Railway, effective F
ruary 18, 1895, and applying on business within the State
Tennessee and Alabama, and on interstate traffic betw
stations in the States of Tennessee, Georgia, Alabama,
Mississippi. (Rec., 248.)

Sixth. The rates for the haul of 425 miles from N
Orleans to Lagrange are the rates for the haul *of 496 m*

from New Orleans through Lagrange to Atlanta *plus the local rate for a haul of 71 miles* from Atlanta back to Lagrange, although the goods are only hauled 425 miles to Lagrange, *there being thus included in the Lagrange rates the charge for a haul of 142 miles not made, and for 71 miles of that haul a high local rate established for a strictly local haul originating at Atlanta and terminating at Lagrange.*

Seventh. That this combination of through and local rates is not the *lowest combination.* The combination on Opelika is (and should be) lower. (See Chap. XIX.)

Eighth. The rates for the haul through Lagrange and 71 miles on to Atlanta are reasonably high in themselves and, therefore, the materially higher rates for the materially shorter haul to Lagrange are, presumptively, at least, excessive.

The above eight grounds, upon which we predicate the excessiveness of the Lagrange rates, will be discussed at length in subsequent chapters of this argument.

CHAPTER VI.

Excessiveness of Lagrange rates continued.

Rate per ton per mile under Lagrange rates compared with average revenue per ton per mile on roads throughout the country.

As one among many other circumstances showing, or tending to show, the excessiveness of the rates to Lagrange, we call attention to the fact that those rates yield an *average* rate per ton per mile from *four* to *five* times as high as the *average* revenue per ton per mile on roads not only in Southern territory, but throughout the United States.

We give below the rates per ton per mile on the different classes under the rates from New Orleans to Lagrange:

Class rates per ton per mile to Lagrange.

1.	2.	3.	4.	5.	6.	A.	B.	C.	D.	E.	H.	F.
Cts. 6.73	*Cts.* 5.88	*Cts.* 5.13	*Cts.* 4.37	*Cts.* 3.48	*Cts.* 2.77	*Cts.* 1.92	*Cts.* 2.02	*Cts.* 1.57	*Cts.* 1.36	*Cts.* 3.10	*Cts.* 3.48	*Cts.* 2.77

The average of the above class rates per ton per mile is 3.42 cents, or 34.4 mills.

Revenue per ton per mile on roads throughout the United States and in Southern territory.

The revenue per ton per mile on roads throughout the United States for the years from 1890 to 1897, both inclusive, is shown on the next page.

Revenue per ton per mile.

Year.	Cent.
1890	0.941
1891	.895
1892	.898
1893	.878
1894	.890
1895	.839
1896	.806
1897	.798

Average of above, 0.864 cent, or 8.64 mills. (Rec., 244.)

THE REVENUE PER TON PER MILE FOR THE YEAR 1897 ON ROADS IN WEST VIRGINIA, VIRGINIA, NORTH CAROLINA, AND SOUTH CAROLINA IS GIVEN BELOW:

0.648 cent, or 6.48 mills. (Rec., 244.)

THE REVENUE PER TON PER MILE FOR THE YEAR 1897 OF ROADS IN KENTUCKY, TENNESSEE, MISSISSIPPI, ALABAMA GEORGIA, AND FLORIDA WAS:

0.864 cent, or 8.64 mills. (Rec., 244.)

RECAPITULATION.

	Mills.
Average of rates per ton per mile to Lagrange	*34.2*
Average revenue per ton per mile for eight years of roads throughout United States	8.6
Average revenue per ton per mile for 1897 of roads in Kentucky, Tennessee, Mississippi, Alabama, Georgia, and Florida	8.6
Same of roads in West Virginia, Virginia, North Carolina, and South Carolina	6.4

From the above it will be seen that the *average* of the rates per ton per mile to Lagrange, namely, *34.2 mills*, is *four times* as large as the *average* revenue per ton per mile for eight years of roads throughout the United States, and *four times* as large as the *average* revenue per ton per mile for the year 1897 of roads in Kentucky, Tennessee, Mississippi, Alabama,

Georgia, and Florida; over *five times* as large as the *average* revenue per ton per mile of roads in West Virginia, Virginia, North Carolina, and South Carolina.

Below are set forth the rates per ton per mile, and the *average* of those rates on sugar, molasses, and rice from New Orleans to Lagrange.

Sugar, molasses, and rice rates per ton per mile to Lagrange.

Sugar in barrels.		Sugar in barrels.		Taking sixth class, sugar except in barrels.		Molasses in kegs.		Molasses in barrels or hogsheads.	
C. L.	L. C. L.	C. L.	L. C. L.	C. L.	L. C. L.	C. L.	L. C. L.	C. L.	L. C. L.
Cents. 1.74	*Cents.* 1.88	*Cents.* 1.88	*Cents.* 1.88	*Cents.* 0.27	*Cents.* 0.27	*Cents.* 1.74	*Cents.* 1.74	*Cents.* 1.62	*Cents.* 1.62

The average of the above rates per ton per mile on sugar, molasses, and rice is—

1.46 cents, or 14.6 mills.

Although sugar, molasses, and rice are not high grades of traffic, the above *average* of the rates per ton per mile on those commodities from New Orleans to Lagrange—namely, *14.6 mills*—is *over twice* as high as the average revenue per ton per mile for the year 1897 on roads in West Virginia, Virginia, North Carolina, and South Carolina, and *nearly twice as high* as the average revenue per ton per mile for the year 1897 of roads in Kentucky, Tennessee, Mississippi, Alabama, Georgia, and Florida, and on roads throughout the United States for the years from 1890 to 1897, both inclusive.

Counsel for the carriers contended in his oral argument that the average revenue per ton per mile of roads *on all classes of traffic* sheds no light upon the reasonableness of a rate upon a single commodity or class of traffic. It is not necessary that we controvert this proposition, because *we have compared above the average revenue of the roads on all classes of traffic with the average of the rates per ton per mile on all classes of traffic to Lagrange.*

While receipts per ton per mile will increase as the proportion which high-class traffic bears to low-class traffic increases, those receipts will also increase as the rates increase.

Counsel for the carriers demonstrates the first half or clause of the above proposition, *but ignores the concluding clause.*

For this purpose he supposes that the tonnage of a road carried 1 mile for each of three consecutive years is 2,000,000 tons; that during the first year one-fourth of the tonnage is Class 1, and carried at 5 cents a ton, and three-fourths Class A, and carried at 1 cent a ton; that the second year one-half of the tonnage was Class 1 and the other one-half Class A, and carried at the above rates, respectively; and that the third year three-fourths of the tonnage was Class 1 and the remaining one-fourth Class A, and carried at the above rates, respectively. Under this state of facts, although the rates and the *aggregate* tonnage remained the same each year, the average receipts per ton per mile would be for the first year 2 cents, for the second year 3 cents, and for the third year 4 cents.

This simply shows that the receipts per ton per mile are subject to variation, as the classes of traffic transported vary, *the rates and aggregate tonnage remaining the same.*

The fact remains, however, that if the rates on Class 1 traffic for the second year, for instance, were advanced to 7 cents, and to 2 cents on Class A traffic, the average receipts per ton per mile would be increased from 3 cents per ton per mile to 4½ cents. *This demonstrates that the amount of the average receipts per ton per mile are dependent upon the amount of the rate charged, as well as the proportion which high-class traffic bears to low-class traffic. Both are factors.*

If, therefore, as counsel for the roads says, the average receipts per ton per mile are valuable as "showing the pro-

portion which the high-class traffic bears to the low-class traffic," they are equally valuable as showing whether *the rates charged are* HIGH OR LOW.

The fact that the rates from New Orleans to Lagrange yield an average rate per ton per mile so many times higher than the revenue per ton per mile on roads in all sections of the United States, taken in connection with other pertinent facts, certainly shows, or tends to show, the excessiveness of those rates.

CHAPTER VII.

The excessiveness of Lagrange rates continued. They are over 30 per cent higher than Georgia standard rates for the same distance even with 10 per cent added to those rates.

There are a number of cases before the courts involving rates to Atlanta from all directions, and to shorter distance surrounding localities. In all these cases the defendant carriers claim that as parts of the through rates to the shorter distance points they charge *the Georgia standard distance rates*, established by the Georgia railroad commission, for those portions of the hauls within the State of Georgia, and they set up this as one ground for the opinion expressed by them that the rates to the shorter distance points are reasonable.

Their witnesses testify in effect that the standard rates established by the Georgia Railroad Commission afford them *a standard of reasonableness*. (Ans. to int. 5, Rec., 370, 376, 391.) In Paragraph XIII of the answer filed by the defendants in the present case, they allege that the rates fixed by the Georgia Railroad Commission are just and reasonable. (Rec., 20.)

The defendants having thus emphatically indorsed the reasonableness of the Georgia standard rates fixed by the Georgia Railroad Commission, *are estopped from disputing their reasonableness.*

On comparison of the Lagrange rates from New Orleans, the distance being *425 miles*, with the Georgia standard rates *of 430 miles*, it will be found that the Lagrange rates for *425 miles* are over 30 per cent higher than the Georgia standard rates for *430 miles.*

The Georgia standard rates established by the railroad commission of Georgia for the distance of 430 miles are as follows, in cents per 100 pounds:

Georgia standard rates for 430 miles.

1	2	3	4	5	6	A	B	C	D	E	F (per barrel).	G	H
91	77	62	52	42	37	37	37	26	24	43	52	11.5	54

(Rec., 246.)

The Atlanta and West Point Road is allowed by the Georgia railroad commission to add 10 per cent to the above rates on all classes except classes C, D, and F. With this addition of 10 per cent the above rates become as shown below:

Above rates with 10 per cent added on all classes except classes C, D, and F.

1.	2.	3.	4.	5.	6.	A.	B.	C.	D.	E.	F (per barrel).	G.	H.
100.1	84.7	68.2	57.2	46.2	40.7	40.7	40.7	26	24	47.3	52	12.6	59.4

The class rates for 425 miles charged by the defendants from New Orleans to Lagrange are as follows:

Class rates for 425 miles from New Orleans to Lagrange.

1.	2.	3.	4.	5.	6.	A.	B.	C.	D.	E.	F (per barrel).	H.
143	124	109	93	74	59	41	48	33.5	29	66	59	74

(Rec., 70.)

Subtracting the Georgia standard rates for *430 miles*, with 10 per cent added, from the above class rates charged by defendants for a haul of *425 miles* from New Orleans to Lagrange, it will be seen that the Lagrange rates are *over 30 per cent higher* than the Georgia standard rates, even with 10 per cent added, as shown in next table.

Excess in cents per hundred pounds of Lagrange rates over Georgia standard rates, with 10 per cent added to the latter.

1.	2.	3.	4.	5.	6.	A.	B.	C.	D.	E.	F.	H.
42.9	39.3	40.8	35.8	27.8	18.3	0.3	7.3	7.5	5.0	18.7	7.0	14.6

The above excesses *in cents per hundred pounds* of the Lagrange rates over the Georgia standard rates, with 10 per cent added to the latter, amount on a *minimum carload of 24,000 pounds* to the sums given below:

Excess per minimum carload of 24,000 pounds of Lagrange rates over standard rates of the Georgia Railroad Commission for 430 miles, with 10 per cent added.

1.	2.	3.	4.	5.	6.	A.	B.	C.	D.	E.	F.	H.
$102.96	$94.32	$97.92	$85.92	$66.72	$43.92	$0.72	$17.52	$18.00	$12.00	$44.88	$16.80	$35.04

These standard rates established by the Georgia Railroad Commission are *maximum* rates, beyond which carriers are allowed to go only in *exceptional* cases. In other words, they are the *rule*. The Atlanta and West Point road, for some reason not given, is allowed, as we have seen, to add 10 per cent to these rates on certain classes, but the Lagrange rates are *over 30 per cent* higher than these maximum rates, *even when thus increased.*

Judged, therefore, by the standard of reasonableness which the carriers have themselves set up, both in their pleading and in the testimony of their witnesses, the Lagrange rates are excesive.

CHAPTER VIII.

Excessiveness of Lagrange rates continued.

Attempted explanation of or answer to the fact, that the Lagrange rates are 30 per cent higher than the Georgia Standard rates with 10 per cent added to those rates.

Notwithstanding, as stated in the preceding chapter, the defendants allege in their answer that the Georgia Standard rates are reasonable and their witnesses testify in effect that *they afford a standard of reasonableness*, still, counsel for the carriers undertakes to show that those Georgia Standard rates are unreasonably low, and, therefore, not a proper standard of reasonableness.

He is driven to this position by the fact that the Lagrange rates involved in this case are, as shown in the preceding chapter, so very much higher than those Georgia Standard rates for the same distance.

DIVISION OF HAUL TO LAGRANGE INTO FOUR HAULS. In order to show that the Georgia Standard rates are unreasonably low, counsel for the carriers resorts to the *ingenious device* of dividing the haul from New Orleans to Lagrange into *four distinct hauls*, to wit, from New Orleans to Mobile, from Mobile to Montgomery, from Montgomery to West Point, and from West Point to Lagrange. By thus dividing the haul into four hauls, and by adding together the separate rates charged by the carriers for these four hauls, respectively, he arrives at a rate of *183 cents* on first-class goods for a haul of 425 miles from New Orleans to Lagrange,

when the rate for that distance, as established by the Georgia Railroad Commission, even with 10 per cent added, is only 100 cents.

THE HAUL TO LAGRANGE ONE THROUGH HAUL AND NOT FOUR DISTINCT HAULS. The testimony shows that traffic from New Orleans to Lagrange is hauled to Lagrange under through bills of lading naming aggregate through rates.

(Fuller E. Calloway, Rec., bot. p. 284, top. p. 285.)

(T. J. Harwell, Rec., 312.)

(S. R. Bradfield, Rec., 291.)

THROUGH RATES ARE LOWER THAN THE SUM OF THE SEPARATE RATES OF THE DIFFERENT CARRIERS COMPOSING THE THROUGH LINE. It is a universally recognized fact that the through rates over a line composed of several connecting carriers are invariably made less than the sum of the separate rates charged by those carriers for the hauls over their respective roads. *This is indeed a commercial necessity.* Traffic would not move under through rates, the sum of the separate rates of the different members of the through line. Such rates would be prohibitory.

(Jesse M. Smith, Rec., 253.)

In *Chicago and Northwestern Ry. Co.* v. *Osborne* (52 Fed. Rep., 912) the circuit court of appeals for the eighth circuit, Mr. Justice Brewer delivering the opinion, recognized the distinction between through rates and the separate (local) rates of the different members of the through line, and held that through rates were properly made lower than the sum of the separate (local) rates of the several members of the through line.

In *Minneapolis and St. Louis R. Co.* v. *Minnesota*, the Supreme Court says:

> "*There is an underlying fallacy in the argument of the railroad company in this connection, that the sum of two*

reasonable local rates can not be unreasonable. * * * *We can not assent to this proposition.* The practice of railways in this country is almost universally to the contrary, and a through tariff is almost always fixed at a less sum than the aggregate of local stations between nearby stations upon the same road. * * * There is an increase cost of local business over through business in the additional fuel consumed and the increased wear upon the machinery of each train involved in stopping at every station." (186 U. S., 262.)

THE FACT, THEREFORE, THAT THE GEORGIA STANDARD RATES ARE VERY MUCH LOWER THAN RATES MADE BY A COMBINATION OF THE SEPARATE RATES OF THE DIFFERENT MEMBERS OF THE THROUGH LINE DOES NOT SHOW OR TEND TO SHOW THAT THE GEORGIA STANDARD RATES ARE UNREASONABLY LOW, AND, THEREFORE, NOT A PROPER STANDARD OF MEASUREMENT.

CHAPTER IX.

Excessiveness of Lagrange rates continued.

Further attempted explanation of excess of Lagrange rates over Georgia Standard rates.

It is admitted that the Georgia rates with which we have compared the Lagrange rates are STANDARD rates *intended to apply to Georgia roads in general*, but it is claimed that certain classes of roads are exempt, *for some reason not stated*, from those rates and are allowed to charge higher rates.

For this purpose it is said the railroad commission of Georgia has divided the roads in the State into seven classes, and that roads in class 1 are not allowed to exceed the *standard* rates, while roads in class 2 are allowed to exceed those rates by 10 per cent, in class 3 by 20 per cent, in class 4 by 25 per cent, in class 5 by 25 per cent, in class 6 by from 20 to 50 per cent, and in class 7 by 25 per cent on some classes of traffic and by 50 per cent on others.

The only one of the defendants located in the State of Georgia and subject to the rates prescribed by the Georgia Railroad Commission is the Atlanta and West Point Road, and it is admitted that that road is in class 2 and allowed to add only *10 per cent* to the standard rates.

(Rec., 245.)

Rule 30, or the 90 per cent rule.

By rule 30 of the Georgia Railroad Commission roads in the State of Georgia "*not under the same control*" are allowed to charge a maximum rate not greater than the sum of their local rates, less 10 per cent, for the distance hauled over each road.

(Rec., 250.)

Witness Biles estimate of rates which the Georgia Railroad Commission would authorize from New Orleans to Atlanta.

By placing all the defendants in class No. 4, which are allowed to add *25 per cent* to the standard rates, and by applying rule 30 (the 90 per cent rule) to the defendants, the witness for the defendants, George P. Biles, manages to "figure out" rates from New Orleans to Lagrange less than the rates in question and which he says the Georgia Railroad Commission "*would authorize.*"

(Rec., 391.)

This opinion or conclusion as to what the Georgia Railroad Commission "*would authorize*" is wholly valueless, because:

In the first place, there is no warrant for placing the defendants in class 4, which are allowed to add *25 per cent* to the standard rates. The only one of the defendants subject to the Georgia Railroad Commission, the Atlanta and West Point road, is, as stated above, admitted to be in class 2, which is allowed to add *only 10 per cent.*

(Rec., 245.)

In the second place, rule 30 (90 per cent rule), allowing members of through lines to charge 90 per cent of their local rates, less 10 per cent, only applies to roads "*not under the same control*," and the defendants in this case constituting the through line from New Orleans to Lagrange are under the same or a common control.

Defendants under a common control.

Two defendants, the Western Railway of Alabama and the Atlanta and West Point road, have the same general officers, such as president, traffic manager, auditor, etc., and all the witnesses for the defendants, examined on that point, testified that these two roads were under the same control and management. *There is no dispute as to that fact.*

(T. J. Hunter, Rec., 89.)

(George C. Smith, Rec., 97.)

All three of the defendants under a common control, management, or arrangement as to through freight from New Orleans to Lagrange.

The uncontradicted testimony is that traffic from New Orleans to Lagrange is hauled to Lagrange under through bills of lading naming aggregate through rates. (Rec., bot. p. 284, top p. 285; 312; 291.) Where goods are thus shipped under a through bill of lading, this court holds that the several roads constituting the through line have thereby subjected themselves to "a common control, management, or arrangement for a continuous carriage" within the meaning of the act to regulate commerce. The following is the language of the court on this point:

> "When goods shipped *under a through bill of lading* from a point in one State to a point in another are received in transit by a State common carrier under a conventional division of the charges, such carrier must be deemed to have subjected its road to an arrangement for a continuous carriage or shipment within the meaning of the act to regulate commerce. When we speak of a through bill of lading we are referring to the usual method in use between connecting companies, and must not be understood to imply that a common *control*, *management*, or *arrangement* might not be otherwise manifest." [Italics mine.]
>
> (162 U. S., 193.)

It will be perceived that this Court speaks of a through bill of lading as implying, not only a common management or arrangement, but also a *common control*.

See also U. S. ex rel. I. C. C. *v.* Seaboard Ry. Co. (82 Fed. Rep., 563).

The conjecture or opinion, therefore, of the witness Biles, that the Georgia Railroad Commission would, under its rules, "*authorize*" higher rates from New Orleans to Lagrange

than the rates complained of, is based on TWO FALSE ASSUMPTIONS: *First*, that the defendants would be placed in class 4 and allowed to add *25 per cent* to the standard rates, and, *second*, that the defendants, *who are under a common control*, would be entitled to the benefit of rule 30, which applies only to roads *not under a common control*.

CHAPTER X.

Excessiveness of Lagrange rates continued.

Over 30 per cent higher than rates for same distance under other tariffs besides the Georgia Standard tariff.

The excessiveness of the Lagrange rates is further shown by the fact that they are *more than 30 per cent higher* than the rates under the following three tariffs of, respectively, the Southern Railway, Southern System; the Southern Railway, Western System, and the Illinois Central Railroad, Southern System, to wit:

1. Joint Freight Tariff of the Southern Railway Company (Southern System), I. C. C. No. 2910, issued March 2, 1898, and effective March 5, 1898.

2. Local Freight Tariff No. 1047 (Western System), applicable to business within the States of Tennessee and Alabama, and interstate traffic between stations in the States of Tennessee, Georgia, Alabama, and Mississippi, effective February 18, 1895.

3. Local Distance Tariff of Illinois Central Railroad Company (Southern Line), effective June 1, 1897.

For convenience of comparison, we again set forth below the rates complained of in this case from New Orleans to Lagrange, and underneath the class rates for a distance of 425 miles under the above three (3) tariffs, and the excess of

the former over the latter, in cents per hundred pounds and in dollars and cents per minimum carload:

Class rates of defendants for 425 miles from New Orleans to Lagrange.

1.	2.	3.	4.	5.	6.	A.	B.	C.	D.	E.	F (per barrel.)	H.
Cts.	Cts.	Cts.	Cts.	Cts.	Cts.	Cts.	Cts.	Cts.	Cts.	Cts.	Cts.	Cts.
143	124	109	93	74	59	41	48	33½	29	66	59	74

Class rates for distance of 425 miles of Southern Railway Company under Joint Freight Tariff, I. C. C. No. 2910, effective March 5, 1898.

1.	2.	3.	4.	5.	6.	A.	B.	C.	D.	E.	F (per barrel).	H.
Cts.	Cts.	Cts.	Cts.	Cts.	Cts.	Cts.	Cts.	Cts.	Cts.	Cts.	Cts.	Cts.
94	87	74	60	50	40	30	38	32	27	48	58	58

Excess of Lagrange rates on six numbered classes over above rates per 100 pounds and per minimum carload.

	1.	2.	3.	4.	5.	6.
Per 100 pounds.....	$0.49	$0.37	$0.35	$0.33	$0.24	$0.19
Per minimum car load....	117.60	88.80	84.00	79.20	57.60	45.60

Class rates for 425 miles under local freight tariff No. 1047, W. S. of Southern Railway Company, effective February 18, 1895.

1.	2.	3.	4.	5.	6.	A.	B.	C.	D.	E.	H.	F. (per barrel).
103	88	77	55	52	42	43	44	35	32	52	55	70

Excess of Lagrange rates on six numbered classes over above rates.

PER 100 POUNDS AND PER MINIMUM CARLOAD.

	1.	2.	3.	4.	5.	6.
Per hundred pounds.....	$0.40	$0.36	$0.32	$0.38	$0.22	$0.17
Per minimum carload.....	96.00	86.40	76.80	91.20	52.80	40.80

Class rates for 425 miles under local-distance tariff of Illinois Central Railroad Company (Southern lines), effective June 1, 1897.

1.	2.	3.	4.	5.	6.	A.		B.		C.		D.		E.	H.	F. (per barrel).	
						C L	L CL	C L	L CL	C C	L CL	L CL	L CL			C L	L CL
90	72	59	50	43	38	38	43	40	45	31	36	27	32	43	59	59	69

Excess of Lagrange rates on six numbered classes over above rates, per 100 pounds and per minimum carload.

	1.	2.	3.	4.	5.	6.
Per 100 pounds	$0.53	$0.52	$0.50	$0.43	$0.31	$0.21
Per minimum carload	127.20	124.80	120.00	93.20	74.40	50.40

CHAPTER XI.

Excessiveness of Lagrange rates continued.

Objection to our comparison of rates that no substantial similarity of circumstances and conditions has been proven.

A prima facie case of such similarity made out.

Counsel for carriers has not himself observed the rule laid down by him as to such proof.

Counsel for the carriers contends that we should have accompanied the various tariffs of rates with which we have compared the Lagrange rates with proof that the circumstances and conditions incident to the transportation or lines to which the former are applicable are substantially similar to the circumstances and conditions attending the haul from New Orleans to Lagrange. We think this appears *prima facie* from the fact that *these tariffs are for the most part applicable to practically the same region of country as that traversed from New Orleans to Lagrange.* ALL THESE TARIFFS APPLY TO SOUTHERN TERRITORY.

(Rec., 247, 248.)

These tariffs are made evidence by stipulation between counsel, and the stipulation describes one of those tariffs as "Local Freight Tariff, No. 1047, W. S. (Western System) of the Southern Railway, I. C. C., 233, effective February 18, 1895, *applying on business within the States of Tennessee and Alabama and on interstate traffic between stations in the States of Tennessee, Georgia, Alabama, and Mississippi.*" (Rec., 248.)

This shows that the tariff covered business within the States of "Tennessee and Alabama" and *interstate traffic* between stations in the States of "Tennessee, Georgia, Alabama, and Mississippi"—*part of the very territory to which the rates complained of in this case are applied.*

The stipulation describes the other tariff of the Southern Railway as "*Joint* Freight Tariff of the Southern Railway, I. C. C., No. 2910, issued March 2, 1898, and effective March 5, 1898." It will be noted that this is a "*Joint* Freight Tariff"—that is, it is a tariff not applicable to a haul over the Southern Railway alone, but to a haul *in connection with other roads.* (Rec., 248.)

The lines of the Southern Railway are located *entirely in Southern territory, and run all through the territory in which the line of defendants is located.*

The stipulation as to the tariff of rates of the Illinois Central Railroad Company describes it as "Local distance tariff of the Illinois Central Railroad Company (*Southern lines*) I. C. C., No. B 316." The stipulation, it is thus seen, shows that this tariff applies to the "*Southern lines*" of the Illinois Central Railroad Company—that is, lines running through Southern territory into New Orleans. (Rec., 247.)

GEORGIA STANDARD RATES.—The defendants, as we have shown, are *estopped* from denying that the Georgia Standard rates established by the Georgia Railroad Commission are proper standards of measurement because they have alleged in their answer (section 13) the reasonableness of those rates, and all their witnesses have testified to their reasonableness, *for the purpose of showing the reasonableness of the rates from Atlanta to Lagrange.*

(Rec., 20, 370, 376.)

Counsel for the defendants does not conform to the rule laid down for us.

It is worthy of note that, while counsel for the carriers contends that rates themselves, without proof of the circumstances and conditions incident to them, are of no value for purposes of comparison, and that the burden is upon the party introducing such rates to show the similarity of conditions, *has not conformed to these rules himself.* He has compared the rates from Memphis, Cincinnati, and other Ohio River points, and from Baltimore, Philadelphia, New York, and Boston to Lagrange with the rates from New Orleans to Lagrange, and *has in no instance made proof of a substantial similarity of circumstances and conditions.* (Argument for defendants.)

Again, as above stated, counsel for the carriers, in order to show the reasonableness of the rates for the *haul of 71 miles from Atlanta to Lagrange*, has proven by Mr. G. P. Biles, the rates for the same distance under the "Alabama Distance Table in force on Southern Railway," the "Tennessee Distance Table in force on the Cincinnati, New Orleans and Texas Pacific Railway," and the "Mississippi Distance Table in force on the Kansas City, Memphis and Birmingham Railroad," *without making any proof as to similarity of conditions.* (Rec., 392.)

If these tariff sheets are competent in themselves, without proof of similarity of conditions, to show the reasonableness of the rate for the 71 miles haul from Atlanta to Lagrange, the tariffs which we introduced are equally competent in themselves to show the excessiveness of the rates *for the 425 miles haul from New Orleans to Lagrange.*

Counsel for the carriers should not lay down for others a more rigorous rule than he applies to himself.

CHAPTER XIa.

Claim that reasonableness of Lagrange rates from New Orleans appears from a comparison of them with rates from Louisville, Baltimore, Philadelphia, New York, and Boston to Lagrange.

The Lagrange rates from New Orleans much higher in proportion to distance than the rates from those cities.

Comparison is made in the argument for the defendants of the Lagrange rates for a haul of *425 miles* from New Orleans with the rates for hauls of from *527* miles from Louisville to Lagrange up to hauls of *1,161* miles from Boston to Lagrange.

The following are the distances from the cities named to Lagrange:

	Miles.
From Louisville to Lagrange	527
From Baltimore to Lagrange	761
From Philadelphia to Lagrange	857
From New York to Lagrange	948
From Boston to Lagrange	1,161

The distance from New Orleans to Lagrange being only 425 miles, it will be seen that the distances from these cities to Lagrange exceed the distances from New Orleans to Lagrange as follows:

	Miles.
From Louisville by	102
From Baltimore by	336
From Philadelphia by	432
From New York by	523
From Boston by	736

On calculation it will be found that the Lagrange rates from New Orleans are much higher, *in proportion to distance*, than the rates from Louisville, Baltimore, Philadelphia, New York, or Boston to Lagrange.

FOR EXAMPLE, the lengths of the hauls from Philadelphia, New York, and Boston to Lagrange are from *200 to 300 per cent* greater than the length of the haul from New Orleans to Lagrange, yet the rate from New Orleans to Lagrange on first-class goods is only about *16 per cent* less than the rate from Philadelphia, New York, and Boston.

CHAPTER XII.

Excessiveness of Lagrange rates continued.

Local rates for haul of 71 miles from Atlanta to Lagrange included in Lagrange rates, although the traffic is delivered at Lagrange.

Those local rates higher than Georgia Standard rates for 70 miles.

It is a conceded fact in this case that the Lagrange rates are made up of the through rates for the haul from New Orleans through Lagrange on to Atlanta plus the local rate from Atlanta back to Lagrange, *although the traffic is delivered at Lagrange in the first instance and is not hauled to Atlanta and back.*

It is for this reason that counsel for the carriers has endeavored, as stated in the preceding chapter, to prove the reasonableness of the rates for the 71 miles haul from Atlanta to Lagrange.

As the haul of 71 miles is not in fact made, we contend that the rates for the haul from Atlanta to Lagrange are not properly in issue. *Our proof relates to the rates in issue, namely, the rates for the 425 miles haul from New Orleans to Lagrange.*

Local rates from Lagrange to Atlanta charged as part of through rates to Lagrange are higher than Georgia Standard rates for the distance of 70 miles.

It is to be noted, however, that the local rates from Atlanta to Lagrange, charged as part of the through rates from New Orleans to Lagrange, are higher than the Georgia Standard

rates for the distance of 70 miles. The following are the Georgia Standard rates for that distance:

1.	2.	3.	4.	5.	6.
36	33	29	26	20	15

(Rec., 246, 261.)

The following are the local rates from Atlanta to Lagrange (71 miles) charged as part of the through rates from New Orleans to Lagrange:

1.	2.	3.	4.	5	6.
40	36	32	29	22	17

(Rec., 370.)

CHAPTER XIII.

Excessiveness of Lagrange rates continued.

Combination of through and local rates.

Lagrange charged for a haul of 142 miles not in fact made.

The excessiveness of the Lagrange rates appears from the manner in which they are made. The rates from New Orleans to Lagrange, as stated in the preceding chapter, are the rates charged for the haul through Lagrange and 71 miles on to Atlanta plus the local rate from Atlanta 71 miles back to Lagrange, *although the traffic is in fact delivered at Lagrange in the first instance and not hauled to Atlanta and back.*

Lagrange charged for a haul of 142 miles not made.

In the rate to Lagrange, therefore, there is included a *charge for 142 miles' haul (or two hauls of 71 miles) not in fact* made, and for 71 miles of that haul from Atlanta back to Lagrange, *the charge of a high local rate established by the Georgia Railroad Commission for a strictly local haul of a shipment of goods originating at Atlanta and terminating at Lagrange.*

The railroad officials testify that the through rate for the 496 miles haul through Lagrange to Atlanta is reasonable for that haul, and that the local rate for a haul of 71 miles back to Lagrange is reasonable for that haul, and that the combination of these two rates is also reasonable for the haul from New Orleans to Lagrange, which is shorter by 142 miles than the distance covered by these two rates.

This is, to say the least, a severe draft upon our credulity. If a rate reasonable for a haul of 496 miles is added to a rate reasonable for a haul of 71 miles, making a total haul of 567 miles, then it would appear to be excesssive for a haul of 425 miles *embraced in the haul* for which *the first rate is charged.*

Combination of two reasonable rates.

We are told, however, that this combination rate to Lagrange is reasonable because it is composed of two reasonable rates, and that an *entire* rate composed of two reasonable rates must itself be reasonable.

A more transparent fallacy is not conceivable.

If the service for which the two rates were established was in fact performed, the proposition would be plausible that the entire rate, being composed of two reasonable rates, must, therefore, be reasonable.

It would be fallacious and unsound even then, however, because a rate fixed to cover the extra expense of a strictly local haul and *reasonable only as a local rate* is not reasonable as a proportion of a through rate.

In view of the fact that the haul stops at Lagrange, what has the reasonableness of a rate for a haul through Lagrange to Atlanta and of a local rate for a haul from Atlanta back to Lagrange to do with the case?

In *Minneapolis and St. Louis R. Co.* v. *Minnesota* (186 U. S., 262) this court says:

> "*There is an underlying fallacy in the argument of the railroad company in this connection, that the sum of two reasonable local rates can not be unreasonable.* * * *."

CHAPTER XIV.

Excessiveness of Lagrange rates continued.

The charge of a local rate as a part of a through rate prima facie excessive.

It is testified by railroad officials, and is a conceded fact, that rates established by the Georgia Railroad Commission are for local hauls within the State of Georgia, and that the Georgia Railroad Commission has no jurisdiction, and does not undertake, to establish rates on *interstate* traffic, *and also that the rate for the 71-miles haul from Atlanta to Lagrange was established for a strictly local haul originating at Atlanta and terminating at Lagrange.*

(P. J. McGovern, Rec., bot. p. 372, top p. 373.)

It is also a conceded fact that the expense to the carrier on strictly local hauls is much greater in proportion to distance or per mile than on long through hauls, and that therefore local rates are properly made much higher per mile than through rates or any portion of through rates.

(P. J. McGovern, Rec., 372.)

This is illustrated by a comparison of the rate per ton per mile under the through rate from New Orleans to Atlanta with the rate per ton per mile established by the Georgia Railroad Commission for the local haul from Atlanta to La Grange.

Rate per ton per mile, New Orleans to Lagrange..... 41.5 mills.
Rate per ton per mile, Atlanta to Lagrange ..... 111 mills.

The local rate is thus seen to be about three times as high per ton per mile as the through rate.

The charge, therefore, of a local rate as a part of a through rate, *where the hauls are through hauls and not local and the extra expense of local hauls is not incurred*, is *prima facie* excessive. The Commission has so held, and so have the courts.

In *Augusta Southern Railroad Company* v. *Wrightsville and Tennille Railroad Company* it is said:

> "Nor does it follow, as insisted for the respondent, that the full local rate *permitted by the State law* is, in the absence of a contract between the roads for through shipment, a just or reasonable rate on freight *plainly not local*, but through freight. Why is it reasonable that a railroad company should charge a higher rate for local than for through shipments?
>
> "In King *v.* Railroad Co. (4 Interst. Commerce Com. R., 362), we find this clear proposition:
>
> "'The local rates are made for many trains that run slow, stop generally at every station, delivering and taking on freight, chiefly in parcels not loaded or unloaded by the shippers or consignees, but loaded or unloaded by the servants of the company. They, of course, carry freight occasionally in carloads to local points. Such shipments are, of course, much more expensive than through freights, and for such services an additional charge is reasonable, and the laws permit it.'
>
> "But *no fair or equitable construction will justify the exaction of local rates for freights not local where services belonging to local rates is not offered.*"
>
> (74 Fed. Rep., p. 527.)

In *Minneapolis and St. Louis R. Co.* v. *Minnesota* (186 U. S., 262), this court uses this language:

> "We can not assent to this proposition" (that the sum of two reasonable local rates can not be unreasonable). "The principle of railways in this country is almost universally to the contrary and a through tariff is almost always fixed at a less sum than the aggregate of local tariffs between nearby stations on the same road * * *

There is an increased cost of local business over through business in the additional fuel consumed and the increased wear upon the machinery of each train involved in stopping at every station."

(Citing opinion of Mr. Justice Brewer in *Chicago, etc., Ry. Co.* v. *Thompkins*, 176 U. S., 167).

In *Chicago and Northwestern Ry. Co.* v. *Osborne*, the circuit court of appeals for the eighth circuit, Mr. Justice Brewer delivering the opinion, recognized the distinction to which we have been calling attention between local and through rates, and held that through rates for long through hauls were properly made lower per mile than local rates for hauls covering parts of the through haul.

(52 Fed. Rep., 912.)

CHAPTER XV.

Excessiveness of Lagrange rates continued.

The combination of through and local rates builds up the basing point at the expense of surrounding local stations.

The effect of the combination of through rates to Atlanta and local rates back to Lagrange as the rates to Lagrange, is to build up the basing point, Atlanta, at the expense of Lagrange. It does this in two ways:

First. It enables Atlanta merchants to compete on terms of equality with Lagrange merchants on the streets of Lagrange.

Secondly. It excludes the Lagrange merchants from all the territory between Lagrange and Atlanta and gives the Atlanta merchants a monopoly in that territory.

(1) As the rate on a shipment to Lagrange direct is made up of the rate for the haul through Lagrange to Atlanta and the local rate back, it is evident the Atlanta merchant can ship goods from New Orleans through Lagrange to Atlanta and then reship them back to Lagrange *at the same aggregate rate as that paid by the Lagrange merchant for a shipment direct to Lagrange, and this places the Atlanta merchant on terms of equality with the Lagrange merchant at the doors of the latter.*

Mr. Knott, vice-president of the Louisville and Nashville Railroad Company, testified that "*the Atlanta merchant has no advantage whatever over the Lagrange merchant in selling in Lagrange.*" (Rec., bot. p. 136.)

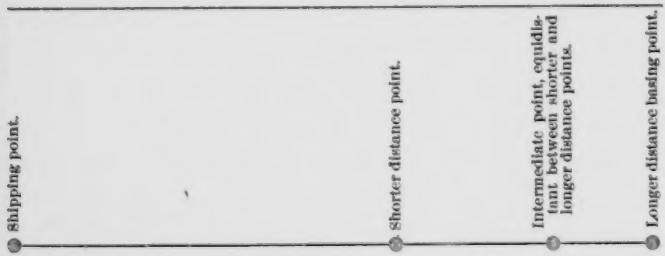
The trouble is that the Atlanta merchant is placed on an equality with the Lagrange merchant in *Lagrange, while the Lagrange merchant is not so placed in Atlanta.* What would the Atlanta merchants think if Lagrange merchants were placed on a footing of equality with Atlanta merchants on the streets of Atlanta as to traffic from New York?

(2) As the Lagrange merchant has to pay two rates for the delivering of the goods to him direct at Lagrange, if he undertakes to reship those goods to any point between Lagrange and Atlanta, it is evident HE MUST PAY THREE RATES: *First*, the rate for the haul through Lagrange to Atlanta; *secondly*, the local rate for the haul from Atlanta back to Lagrange; and *thirdly*, the rate from Lagrange on to the intermediate point.

The Atlanta merchant, however, on a reshipment to an intermediate point between Atlanta and Lagrange, only pays TWO RATES, the through rate to Atlanta plus the local rate from Atlanta to the intermediate point.

THIS MANIFESTLY EXCLUDES THE LAGRANGE MERCHANT FROM ALL INTERMEDIATE TERRITORY AND GIVES THE ATLANTA MERCHANT A COMPLETE MONOPOLY IN THAT TERRITORY.

The diagram below illustrates what is above stated.


Shipping point.
Shorter distance point.
Intermediate point, equidistant between shorter and longer distance points.
Longer distance basing point.

Rate to longer distance point	= 80 cts.	
Local rate from longer distance point back to shorter distance point	= 20 cts.	
Rate to shorter distance point	= 100 cts.	
Rate from shorter and longer distance points to intermediate point	= 10 cts.	
Aggregate rate on reshipment from shorter distance point to intermediate point	= 80 cts. + 20 cts. + 10 cts. = 110 cts	
Aggregate rate on reshipment from longer distance point to intermediate point	= 80 cts. + 10 cts.	= 90 cts.
Excess of aggregate rate from shorter ditance point		= 20 cts.

CHAPTER XVI.

Claim that the system of combining through and local rates is the result of competition at the basing point.

Motive of the carriers in adopting this system. It gives them the rates for two hauls, when only one haul is made.

It is claimed that this system of combining through and local rates as the rates to local stations is the result of competition at the basing point or trade center.

The question arises, Why does competition at the longer-distance basing point have the *precise* effect of enabling the merchant at the longer-distance point to monopolize the business in territory between the two points and to compete on equal terms with the merchant at the shorter-distance point at the *very doors of the latter*, and also enable the road to charge *for services not rendered?*

Motive of the carriers in adopting this system. It enables the carrier to charge for two hauls when only one is made.

The inquiry naturally suggests itself, what benefit can result to the carriers from such a system? What is their object? The answer is obvious. The tendency of this system is to make towns or localities surrounding basing points tributary or dependent upon such basing points for their supplies of goods. The basing points become, in other words, distributing points for surrounding territory, and the carriers

thereby have the benefit of two hauls, the through haul to the basing point and the haul from the basing point at high local rates to surrounding localities; and if merchants at surrounding localities buy their goods direct from the sources of supply of those goods and not from the basing point, *the carrier receives the same rate as if the goods had been shipped in the first instance to the basing point and then hauled back or on to surrounding localities.*

CHAPTER XVII.

Comments of Judge Cooley and Aldace F. Walker on the system of combining the through and local rates.

Origin of the system.

Counsel for the carriers made proof before the Commission of the fact that Judge Cooley, in 1886, before the Interstate Commerce Commission was organized, as arbitrator, approved a certain basis of rates, agreed upon by the carriers, establishing the relation between the rates *from Ohio River points and Mississippi River points to Atlanta*, but Judge Cooley never indorsed *the relation between the rates to Lagrange and Atlanta* and never approved the system of combining through and local rates, resulting in the greater charge for the shorter than the longer haul, but, *on the contrary, is on record as emphatically disapproving the system.*

Judge Cooley, when a member of the Commission, in the case entitled *In re Louisville and Nashville Railroad Company* (1 I. C. C. R., p. 31), said on this subject:

> The preeminence of such trade centers in the territory reached by the petitioner's roads *is peculiar*, and has probably been increased by the concessions in rates which the railroads have made to them, while making less concessions, or none at all, to less important stations. This condition of affairs tends to perpetuate itself, and the disparity of rates as between competitive and noncompetitive towns, the former being the trade centers, must have had some influence to increase steadily the *disparity in growth and prosperity.*
>
> "By some of the witnesses before us this was bitterly complained of, while by others it was defended as being

best for both classes of towns. The smaller towns in this part of the country, it was said, are *dependent* on the trade centers for their supplies, and they get indirectly the benefit of low rates to the distributing points in lower prices than could otherwise be given them. In proportion, also, as the distributing points are prosperous they can and do extend to the dealers at other points *credit and indulgence*. The prevalence of such ideas, and the acting upon them in making freight tariffs, gives to railroad managers a power of determining within certain limits what towns shall be trade centers and what their relative advantages; and while it may be, as they assert it is, that in deciding upon rates under the pressure of the competition of trade centers they endeavor to do justice between them, yet as they do not at the same time feel a like pressure from noncompetitive points, it is obvious that justice to such points is in great danger of being overlooked, and it is altogether likely that it is so to some extent.

"*One result is that towns recognized by railroad managers as trade centers come to be looked upon* as towns with *special privileges*, and other towns strive for recognition as such and complain perhaps of injustice when they fail. It was made very clear by the evidence produced in behalf of the railroads that the exceptionally favorable rates which were given to certain localities were in some cases *given to build up trade centers;* and as they had had that effect, and large establishments had been located at such centers, invited by the favoring rates, it was urged that there would be injustice in now compelling the roads to go back to the rule of equality. Of this it may be said, *first*, that as between different localities it is no sound reason for discriminating in favor of one as against another that the purpose is to build up the favored locality as a trade center; and, *second*, *if the discrimination has existed and has had its effect, the fact that large establishments have* thereby been encouraged is no reason why the injustice should be perpetuated. *This statute aims at equality of right and privilege, not less between towns than between individuals, and it will no more sanction preferential rates for the purpose of perpetuating distinctions than of creating them.*"

In the case of *Martin et al.* v. *Chicago, Burlington and Quincy Railroad Company* (2 I. C. C. R., pp. 46–47), Judge Cooley says in reference to the bearing of the act to regulate commerce on this Southern Trade Center System:

> But a fatal difficulty with the theory that a trade center as such is entitled to specially favorable rates is found in the fact that it is in conflict with the spirit and purpose of the act to regulate commerce. One of the reasons for the passage of that act was that, by means of rebates and other contrivances, large towns and heavy dealers secured advantages which gave them a practical monopoly of markets and shut out the small towns and small dealers. * * * All large towns, by reason of their being large, inevitably secure certain advantages in transportation. They get more roads, more trains, more agents and servants to attend promptly to business demands, and will be more accommodated, within the limits allowed by law, than will smaller towns, but it does not lie within the power of this Commission to add to these advantages by compelling the carriers operating the lines which reach out from a great railroad center to give to the large towns on their lines more favorable rates than they give to those which are smaller. The fact that under relatively equal rates one town, by reason of its situation, its size, the extent of its manufactures or trade, or for any other reason, secures the major part of the trade with the small towns, is not a fact which can empower this Commission to interfere. There may be great hardships in the situation, but those do not change the law. In contemplation of a law which was enacted in the interest of equality as between large and small interests, there can be no unjust discrimination in giving to large and small towns relatively equal rates. It is not a matter of the least importance, in a legal sense, that the small towns are strictly local and noncompetitive. If, under relatively equal rates, they can elevate themselves to the class of jobbing towns, it is their right to do so.

In the case entitled "*In re Tariffs and Classifications of the Atlanta and West Point Railroad Company et al.*," Mr.

Aldace F. Walker, then a member of the Commission, but who resigned to accept employment from a railway association, said on this subject (3 I. C. C. R., p. 19):

> "Previous to the passage of the act to regulate commerce it was the universal custom *in this section of the country* to establish rates to certain basing points, subject to fluctuations occasioned by competition and otherwise, while rates to and from all other points were obtained by adding the local charges of the various terminal or initial roads to the rates at the basing points.
>
> "These points were selected by reason of their situation upon navigable streams, or at the junction of railroad lines, or as determined by other considerations. Their number was large. The result of the system was that rates quite reasonable, and in some cases low, were given to and from the basing points, and that goods were thence distributed at high local charges in all directions. For example, the rates from New York or Chicago to Atlanta, plus the rate from Atlanta to local points north, east, south, and west therefrom, were the rates charged from New York or Chicago to the latter points direct; and the latter rates were usually very much in excess of rates to distributing points situated at a greater distance over the same line in the same direction. *While this method was satisfactory to the centers which it created and maintained*, the smaller towns and rural communities protested against a system which worked so obviously to their disadvantage. Since the passage of the act the number of these favored localities has decreased in the Southern States, and upon many of the lines the disparity in rates as between them and intermediate or local stations has been diminished. So far as passenger traffic is concerned the rates are generally, if not universally, upon a mileage basis; except upon a few of the weakest roads they are 3 cents per mile."

In the case of the *Union Pacific Company* v. *Goodridge* (149 U. S., p. 690) this court says that the act to regulate commerce was designed "to cut up by the roots the entire system of rebates and discriminations in favor of *particular*

localities, special enterprises, or favored corporations, and to put all shippers on an absolute equality;" and the court also pertinently refers to the fact that carriers "deriving their franchises from the legislature, and *depending upon the will of the people for their very existence*, are bound to deal fairly with the public * * * and to put *all their patrons upon an absolute equality.*"

Origin of the system—Distributing points.

Trade centers are sometimes called distributing as well as basing points, and the fact that they were originally distributing points for surrounding localities may have originated the practice of charging through rates to the distributing point and local rates from the distributing point to surrounding localities, which then purchased their goods and supplies from distributing points. The distributing point was then a reservoir from which goods were sent out to surrounding localities. There were then two distinct hauls—a through haul to the distributing point and local hauls thence to surrounding points. The merchants at surrounding points in those days bought their goods from the distributing point, and not from New Orleans, New York, or Cincinnati, the sources of supply.

The situation now, however, has wholly changed, and there is no excuse whatever for charging local rates as parts of through rates to points surrounding trade centers or basing points. *The reason ceasing, the practice or rule should cease.* As the proof shows, merchants at Lagrange do not buy their goods from Atlanta or Opelika, but from New Orleans, Cincinnati, or New York and other Northeastern cities, and they are consigned and hauled through to Lagrange.

CHAPTER XVIII.

Basing-point or trade-center systems outside of Southern territory.

Basing-point system in trunk-line territory.

Distinction between basing-point systems outside of Southern territory and the system which prevails in that territory.

The one violates the law, the other does not.

Counsel for the carriers calls attention to the fact that basing points or trade centers are not confined to Southern territory. In this connection he cites the basing-point system in what is known as trunk-line territory—that is, territory *north* of the Ohio and Potomac rivers and east of the Mississippi as far as New York and Boston on the Eastern seaboard.

In this territory the rates from New York to Chicago are taken as the basis—that is, as 100 per cent—and the rates to intermediate shorter distance points are certain percentages of the New York-Chicago rate, the amount depending on the length of the haul.

(Answer of P. J. McGovern to cross-interrogatory 18, Rec., 374.)

For example, the rates from New York to Indianapolis are fixed at 93 per cent of the New York-Chicago rate—the distance from New York to Indianapolis being 825 miles and from New York to Chicago 912 miles. In like manner the rates from New York to Detroit are fixed at 78 per cent of the New York-Chicago rate; from New York to Cincinnati at 87 per cent; from New York to Columbus, Ohio, at 87 per cent, and from New York to Cleveland, Ohio, at 71 per cent.

It is thus seen that under this basing-point system there is no greater charge for the shorter than the longer haul.

This is a radical distinction between the Southern trade-center or basing-point system and the trunk-line basing-point system. The latter is not in contravention of the rule of the fourth section of the law, while the former is.

It is a well-established fact that the rates from the Eastern seaboard, New York and Boston, to Chicago, *are competitive rates;* in other words, rates controlled by water competition via the *Hudson River and the Erie Canal and the Lakes* up to the very doors of Chicago.

Notwithstanding this competition, it has not been found necessary to violate the long and short haul rule by making rates to intermediate points higher than rates to Chicago.

The rates to intermediate points are in some instances made as high as the rates for the longer haul to Chicago. Competition has not *driven the carriers beyond this point.*

This sustains our proposition that Lagrange rates not higher than the rates to Atlanta will make due allowance for any dissimilarity of conditions which may exist because of competition at Atlanta.

The rates from the East to points west of the Mississippi are combinations of the rates to the Mississippi plus the rates from the Mississippi on. This, however, does not *result in a greater charge for the shorter than the longer haul.*

In some instances, as shown by the testimony of Mr. Smith, the rates to Pacific coast terminals are somewhat lower than the rates to some intermediate points; but Mr. Smith testifies that these are *exceptional cases* and that the *rule* is the other way.

Violations of the law is the *rule* in the Southern territory.

Trade centers exist and flourish in trunk-line territory and in the North. This demonstrates that violations of the long and short haul rule are not necessary to the maintenance of such trade centers.

Counsel for carriers stated in his oral argument that *combination rates existed before the advent of railways*, and cited as an example rates from New York by ocean to Charleston or Savannah and thence to points inland, the entire rate to the inland point being a combination of the ocean rate with the inland rate. This, however, did not result in a higher rate for a shorter haul. *That is a device of the roads alone.*

CHAPTER XIX.

Excessiveness of Lagrange rates, continued.

Claim that Lagrange rates are not excessive because of the alleged fact that Lagrange is given the lowest combination of through and local rates.

The lowest combination is and should be on Opelika and not on Atlanta.

The main defense set up in the answer of the defendants, and by their witnesses in the testimony, and by their counsel in his argument before the courts below, is, that the Lagrange rates are reasonable, because they are a combination of the competitive rates from New Orleans to Atlanta with the local rates from Atlanta back to Lagrange, and *that this combination is the lowest combination of through and local rates that can be made to Lagrange.*

In the answer of defendants, counsel for the carriers sets forth tables of rates, showing that by basing the Lagrange rates on the Atlanta rates there results a *lower combination* than if they were based on the *Montgomery rates.*

The lowest combination on Opelika.

The lowest combination is, however, as a matter of fact, and should be, on OPELIKA.

Opelika is a competitive point, and given for the most part the same rates as Atlanta. (See first table of rates, Chapter III, page —, of this argument; Rec., top p. 353, 359.) *The distance from Opelika to Lagrange is only 38 miles, while from Atlanta back to Lagrange it is 71 miles.*

The rates for the haul of 38 miles from Opelika to Lagrange should be very much less than for the 71 miles haul from Atlanta to Lagrange, and we find, according to the undisputed testimony on this point, that *the rates charged from Opelika to Lagrange are less than the rates from Atlanta back to Lagrange, and that this results in making the Opelika combination materially lower than the Atlanta combination.*

This will be seen from the following tables of rates:

Rates from Opelika to Lagrange.

1.	2.	3.	4.	5.	6.	A.	B.	C.	D.	E.	H.	F.
32	29	26	23	19	14	14	14	8.2	8	19	23	17.2

(Rec., bot. pp. 282, 332.)

Under these rates the combination on Opelika is materially lower than the combination on Atlanta, as shown by the tables below:

Rates, New Orleans to Lagrange, based on Opelika.

Classes.	1.	2.	3.	4.	5.	6.	A.	B.	C.	D.	E.	F.	H.
Rates from New Orleans to Opelika	103	88	77	64	52	42	24	33	26	22	46	44	51
Rates from Opelika to Lagrange	32	29	26	23	19	14	14	14	8.2	8	19	17.2	23
New Orleans to Lagrange, based on Opelika	135	117	103	87	71	56	38	47	34.2	30	65	61.2	74

Rates, New Orleans to Lagrange, based on Atlanta.

Classes.	1.	2.	3.	4.	5	6.	A.	B.	C.	D.	E.	F.	H.
Rates from New Orleans to Atlanta	103	88	77	64	52	42	24	31	24	20	44	40	49
Rates from Atlanta to Lagrange	40	36	32	29	22	17	17	17	9.5	9	22	19	29
Rates from New Orleans to Lagrange, *based on Atlanta*	143	124	109	93	74	59	41	48	33.5	29	66	59	78

Excess of combinations on Atlanta over combinations on Opelika.

Classes.	1.	2.	3.	4.	5.	6.	A.	B.	C.	D.	E.	F.	H.
Cents per 100 lbs.....	8	7	6	6	3	3	3	1	...	...	1	...	4
Per minimum carload of 24,000 lbs.....	$19.20	$16.80	$14.40	$14.40	$7.20	$7.20	$7.20	$2.40	...	...	$2.40	...	$9.60

(NOTE.—Opelika merchants can ship goods from New Orleans to Opelika and then reship from Opelika to Lagrange at lower aggregate rates than Lagrange merchants are charged on a straight shipment to Lagrange by 8 cents per 100 pounds, or $19.20 per minimum carload on *class 1 goods, etc.*)

Combination on Opelika should be less than above, Opelika being 109 miles shorter haul from New Orleans than Atlanta.

Under any reasonable system of rate making the rate to Opelika, the haul being shorter by 109 miles, should be less than to Atlanta; and under any reasonable system of rate making, as before said, the rate for the 38 miles haul from Opelika to Lagrange should be (as it is) less than for the 71 miles haul from Atlanta to Lagrange. *A Lagrange rate based on the Opelika rate should, therefore, be materially lower not only than a Lagrange rate based on the Atlanta rate, but also than the above Opelika combination rate.*

Opelika combination the more natural combination.

Moreover, the Opelika combination would be, we might say, *the more natural*, because under that *the service for which the combination rates would be charged would be rendered*—the haul being through Opelika and on to Lagrange; whereas under the Atlanta combination, while the haul stops at Lagrange, the Lagrange rates embrace a charge for the haul to Atlanta and back—*a charge for four terminals and a haul of 142 miles not in fact made.*

We here give a diagram of the route from New Orleans to Atlanta, from which it appears that the haul from Atlanta back to Lagrange is *nearly twice as long as the haul from Opelika on to Lagrange.*

DIAGRAM.

DISTANCES -

New Orleans	to	Atlanta, --	496	Miles.
"	"	La Grange -	425	"
"	"	Opelika --	387	"
Opelika	to	La Grange ---	38	Miles.
Atlanta	"	" ---	71	"

CHAPTER XX.

Excessiveness of Lagrange rates continued.

Practical admission that Opelika combination is the lower combination, and that Lagrange is entitled to that combination.

Confession of judgment on this point by putting in force, since argument in circuit court of appeals, the Opelika combination as the rates to Lagrange.

Counsel for the carriers filed in the circuit court of appeals what purported to be a "supplemental argument," but which was rather an attempt to get into the record or *before the mind of the court* matter which not only was not in existence when the order of the Commission was made and when the suit to enforce that order was brought in the circuit court, but which is alleged to have come into existence nearly two years after suit was instituted, and long after it had been heard and decided by the circuit court and had been argued and submitted on *appeal* to the circuit court of appeals.

The order of the Commission involved in this case was issued December 31, 1897, and this suit was commenced in the circuit court at Mobile July 23, 1898. The matter sought to be brought before the court is what purports to be a "joint freight tariff," issued by the appellants *May 15, 1900*, to be effective *May 20, 1900*.

If such a practice as this is legitimate and receives the sanction of this court, all that defendant carriers will have to do in any case after the Commission has filed its bill will be

to readjust their tariffs and then ask the courts to dismiss on that ground the Commission's bill of complaint, *thus leaving the carriers without any decree of the court restraining them from returning to the abuses which have been the subject of complaint.*

THE NEW TARIFF PURPORTS TO GIVE LAGRANGE THE BENEFIT OF THE OPELIKA COMBINATION, AND IS AS FOLLOWS:

1.	2.	3.	4.	5.	6.	A.	B.	C.	D.	E.	H.	F.
135	117	103	87	71	56	38	47	33½	29	65	74	59

The Lagrange rates complained of in this case are as follows:

1.	2.	3.	4.	5.	6.	A.	B.	C.	D.	E.	H.	F.
143	124	109	93	74	59	41	48	33½	29	66	74	59

It will be perceived that the rates in the new tariff are lower on all the classes than the rates in the tariff complained of, except D, H, and F, and on those classes they are the same.

The new tariff does not fully remedy the wrongs complained of.

While this new tariff reduces the Lagrange rates on all classes but three by giving Lagrange the benefit of the Opelika combination, it does not fully remedy the wrongs complained of. It still leaves the Lagrange rates materially higher, not only than the Atlanta rates, but also than the rates to the local stations, Hogansville, Newnan, Palmetto, and Fairburn, situated between Lagrange and Atlanta.

New tariff a confession of judgment or an admission that the rates complained of are unlawful.

IT CALLS AT MOST FOR A MODIFICATION OF THE ORDER AND NOT AN ABSOLUTE DISMISSAL OF THE COMMISSION'S BILL OF COMPLAINT.

The new tariff is an *admission* that Lagrange is entitled to the *Opelika* combination, and that the rates complained of were to the extent it reduced them illegal; and if the court should conclude to consider it and be influenced by it to any extent, *it would at most call for a modification of the order of the Commission and not for an absolute dismissal of its bill.* If, as before stated, the bill should be absolutely and unqualifiedly dismissed, there would be nothing to prevent the appellants reinstating their old unjust tariff.

Even if the appellants, *after suit brought*, had put in force a tariff *conforming fully* to the order of the Commission, it would have been no ground for dismissing the Commission's bill of complaint. *Per contra*, it would have been a confession or admission of the justice and legality of the order of the Commission, and *a decree for the enforcement of the order would still have been necessary to prevent a return to the old discriminating tariff.*

CHAPTER XXI.

Excessiveness of Lagrange rates continued.

No extra expense on hauls from New Orleans to Lagrange, whether made in carloads or less than carloads.

Lagrange charged for four terminals.

There is no allegation in the answer of the defendants, nor any testimony, showing that the higher rates for the shorter haul to Lagrange than to Atlanta, etc., are justified by any extra expense or anything relating to the *nature and character* of the service of transportation to Lagrange, on the one hand, and Atlanta, etc., on the other.

Competition, as before said, is the sole defense relied upon.

Mr. R. E. Lutz testified before the Commission as follows:

> "I SUPPOSE it costs fully three times as much to handle Lagrange business as it does Atlanta business, notwithstanding the distance to Atlanta is greater than it is to Lagrange."

Counsel for the carriers cites this testimony, but omits to mention the fact that the witness was comparing the cost on *less than carloads* to Lagrange with the cost on *carloads* to Atlanta (Rec., 108, 109). This testimony of Mr. Lutz, moreover, is mere SUPPOSITION.

It is manifest the witness should have compared the cost on less than carloads to Lagrange with the cost on less than carloads to Atlanta, and the cost on carloads to Lagrange with the cost on carloads to Atlanta.

On cross-examination as a witness before the court he was called on to do this, and testified that there would be no difference in expense of transfers, either on carload or less than carload shipments, to Lagrange and Atlanta, as will be seen from the following extracts from his testimony. (Answer of R. E. Lutz to cross-interrogatories 38, 39, 40, 41, 47, 48; Rec., bot. p. 363, top p. 364; 365.)

LESS THAN CARLOADS.

Cross-interrogatory 47. My question is, In the event a less than carload shipment is made to Atlanta, is the expense of transfer any less than on the shipments to Lagrange?

Answer. I can hardly answer that, for the simple reason that we seldom have less than carload shipments to Atlanta.

Cross-interrogatory 48. Suppose there should be?

Answer. *There should be no difference.* (Rec., 365.)

AS TO CARLOAD SHIPMENTS.

Cross-interrogatory 38. When goods are hauled in carloads from New Orleans to Lagrange, is there any transfer except at Montgomery?

Answer. No, sir.

Cross-interrogatory 39. When goods are hauled from New Orleans via Montgomery to Lagrange, is the expense of transfer at Montgomery any greater than when such goods are hauled to Atlanta?

Answer. No.

Cross-interrogatory 40. When goods are hauled in carloads from New Orleans to Lagrange, are they not hauled in the same car all the way?

Answer. They would be, ordinarily, unless there was some reason which would make it necessary to transfer the car. Ordinarily they would go through.

Cross-interrogatory 41. Is there more expense to transfer a car at Montgomery to the track of the Western Railway of Alabama when goods are shipped to Lagrange than when shipped to Atlanta?

Answer. No, sir; there is no difference in the cost of moving a car from a point on the Louisville and Nashville Railway to points on the Western Railway of Alabama. (Rec., bot. p. 363, top p. 364.)

There is, therefore, no extra expense on shipments of goods from New Orleans to Lagrange over that on shipments from New Orleans to Atlanta in either case—that is, whether goods are shipped in carloads or less than carloads.

There is, however, on shipments to Atlanta in both cases the extra expense of the 71 miles longer haul.

Goods shipped to Lagrange take the higher rates than the Atlanta rates, whether shipped in carloads or less than carloads.

The attempt is made to justify the higher rates to Lagrange than to Atlanta, because it is said that goods are shipped to Lagrange for the most part in less than carloads, while to Atlanta they are shipped for the most part in carloads, and that less than carload shipments are more expensive than carload shipments.

The discrimination in rates against Lagrange and in favor of Atlanta has brought about this very condition of things.

Mr. Fuller E. Callaway, a leading merchant in Lagrange for a long number of years, testifies:

"Interrogatory No. 15. If you say that goods are seldom shipped in carloads from New Orleans to Lagrange, state why this is so.

"Answer. The reason why goods are seldom shipped in carloads from New Orleans to Lagrange is on account of the excessive discrimination of freight rates against Lagrange, which paralyzes Lagrange's outlet to such an extent that she can not handle carloads in competition with Opelika and Atlanta, which have such preferential rates against Lagrange." (Rec., 285.)

In attempting to justify the higher rates to Lagrange because shipments to Lagrange are for the most part in less

than carloads, the carriers are seeking to take *advantage of their own wrong*—in other words, of a situation or condition the result of their discrimination against Lagrange.

They have tied Lagrange hand and foot, and because she can not run while thus tied, they contend she should remain tied.

Lagrange charged for four terminals.

The cost of every haul consists of the expense of the *two terminals* and the intermediate haul. Every rate is intended to cover the expense of two terminals. The rate from New Orleans to Atlanta covers the terminal expenses at New Orleans and at Atlanta, and the rate from Atlanta back to Lagrange covers the terminal expenses at Atlanta and at Lagrange. Therefore, the Lagrange rate, being made up of these two rates, embraces the *expenses of four terminals.*

This fact clearly indicates the excessiveness of the Lagrange rate.

CHAPTER XXII.

Lagrange victimized in both directions.

Lagrange can not compete with Atlanta on the north or with Opelika on the south.

The case of *I. C. C.* v. *The Clyde S. S. Co., the Atlanta and West Point R. R. Co., et al.* (93 Fed. Rep., 83), involved rates from New York and other Eastern cities to Lagrange as the shorter distance point and Opelika as the longer distance point. It was shown in that case that the Lagrange rates from the East were, as in the present case, based on the Atlanta rates; that is, they were the through rates to Atlanta from the East plus the rate from Atlanta on to Lagrange. (NOTE.—*In that case the haul was actually performed.*)

The proof in that case showed that the rates to Lagrange from the East thus made up were so much higher than the rates from the East for the haul through Lagrange to Opelika that Opelika merchants could not only compete with Lagrange merchants in Lagrange on terms of equality, but could actually undersell Lagrange merchants on the streets of Lagrange. It was also shown in that case, as in the present, that Atlanta merchants could compete with Lagrange merchants on terms of equality in Lagrange, and had a monopoly in the territory between Lagrange and Atlanta on traffic from the East.

In the present case on traffic from New Orleans, the rates to Opelika plus the rates to Lagrange—in other words, the Opelika combination—being lower than the Atlanta combination, Opelika merchants can undersell Lagrange merchants on the streets of Lagrange and have a monopoly of the territory between Lagrange and Opelika.

Lagrange victimized in both directions.

This system of rate making, therefore, results in victimizing Lagrange, so to speak, in both directions. Under it she can not compete on traffic from either the east or the west with Atlanta merchants in territory between Lagrange and Opelika. SHE CAN NOT COMPETE ON TERMS OF EQUALITY WITH OPELIKA MERCHANTS EVEN ON THE STREETS OF LAGRANGE.

This is an illustration of the disastrous effect of this system of rate making on localities discriminated against and the undue preference under it of localities favored by the discrimination.

In the "Alabama Midland Case" Judge Bruce, delivering the opinion of the circuit court, quotes what he terms the "trite saying" that "Competition is the *life of trade.*" Under this Southern basing point system of rate making, competition may be the life of trade at certain favored points like Atlanta or Opelika, but at other points *equally favored by nature* it appears to be the *death of trade.*

CHAPTER XXIII.

Discrimination against Lagrange in favor of longer distance strictly local stations—Hogansville, Palmetto, and Fairburn.

In this case the question is presented for the first time whether competition at a trade center or basing point like Atlanta can justify discrimination not only in favor of such trade center or basing point but also in favor of *longer distance strictly local stations.*

The rates from New Orleans to Lagrange, as we have seen, are materially higher than the rates for the haul through Lagrange and 13 miles on to Hogansville, 46 miles on to Palmetto, and 53 miles on to Fairburn.

Hogansville, Palmetto, and Fairburn are strictly local stations on one road alone, and are very much smaller and of very much less commercial importance than Lagrange. *Lagrange is, moreover, on two roads.*

It would seem that if the long and short haul rule of section 4 of the law can have operation in any case, it would be in such a case as this, as between Lagrange, on the one hand, and Hogansville, Palmetto, and Fairburn on the other.

In the "Alabama Midland Case" the rates involved were through rates to Montgomery, a trade center or basing point, and the rates to Troy, Ala. The circuit court held that competition at Montgomery justified rates relatively, and also in some instances absolutely, lower than the rates to Troy. After so holding, however, the court said that in a case involving discrimination between *local stations* "it might not be difficult to apply the law." (69 Fed. Rep., p. 232.)

The present case, however, is stronger than a case of discrimination, where the locality discriminated against is a strictly local station, and the localities in whose favor the discriminations are made are also strictly local stations, because *Lagrange is not a strictly local station, being on two distinct roads.*

The fact that basing the Lagrange rate on the Atlanta rate and making the Lagrange rate the through rate to Atlanta, plus the local back to Lagrange, results in higher rates to Lagrange than to the longer distance strictly local stations—Hogansville, Palmetto, and Fairburn—is a demonstration that *this system of rate making is radically wrong.*

CHAPTER XXIV.

Lagrange entitled to treatment as a competitive point.

No necessity, therefore, for making the Lagrange rate a combination rate.

Lagrange the only station situated on two distinct roads between Selma and Atlanta which is not given competitive rates.

The witnesses for the carriers testify that the points on the Western Railway of Alabama and the Atlanta and West Point road between Selma and Atlanta, which are competitive points and given the benefit of competitive rates, are *Montgomery*, *Opelika*, *Newnan*, and *Atlanta*.

(Answer of T. J. Hunter to cross-question 6, Rec. 352, 353.)

It will be perceived that Lagrange is the only point on that line which is situated on two distinct roads that is not given competitive rates. Opelika and Newnan are on two roads, and are given competitive rates. Lagrange is on the Atlanta and West Point road and the Macon and Birmingham road, and it is denied competitive rates.

Lagrange, being on two roads, is entitled to competitive rates, and therefore there is no necessity for making the Lagrange rate a combination rate. There is no necessity for making the Lagrange rate a rate based on the Atlanta rate, or the Montgomery rate, or the Opelika rate.

Lagrange, being located on two roads, the Atlanta and West Point and the Macon and Birmingham road, has connection by means of those roads, either as initial or terminal carriers, not only with New Orleans, but with all the markets north, south, east, and west with which Atlanta has connection.

The Macon and Birmingham road extends 105 miles from Lagrange to Macon, and is intersected at various points, Harris City, Woodbury, Yatesville, etc., by the Central of Georgia System, the Southern Railway, and the Georgia Southern and Florida road, and at Macon it meets the Georgia Railroad, the Central of Georgia Railroad, and the Southern Railway, forming lines to Charleston, Savannah, and other South Atlantic ports, and to Baltimore, Philadelphia, New York, and other Eastern seaboard ports.

The three principal roads leading out from New Orleans are the Louisville and Nashville, the New Orleans and Northeastern, and the Illinois Central, and by combination with these three roads as initial carriers, and the Atlanta and West Point and Macon and Birmingham roads as terminal carriers, the following 11 lines can be formed from New Orleans to Lagrange:

(Answer of Jessie M. Smith to interrogatory 26; Rec., 257–259.)

Lines, New Orleans to Lagrange.	Miles.	Total miles.
Louisville and Nashville R. R. to Montgomery	321	
Western of Alabama Ry. to West Point	88	
Atlanta and West Point R. R. to Lagrange	16	
		425
Louisville and Nashville R. R. to Montgomery	321	
Central of Georgia Ry. to Harris City	143	
Macon and Birmingham Ry. to Lagrange	22	
		486
Louisville and Nashville R. R. to Montgomery	321	
Central of Georgia Ry. to Fort Valley	167	
Southern Ry. to Yatesville	34	
Macon and Birmingham Ry. to Lagrange	61	
		583
Louisville and Nashville R. R. to Montgomery	321	
Central of Georgia Ry. to Macon	196	
Macon and Birmingham Ry. to Lagrange	105	
		622
Louisville and Nashville R. R. to River Junction	407	
Plant Lines to Albany	116	
Central of Georgia Ry. to Fort Valley	78	
Southern Ry. to Yatesville	34	
Macon and Birmingham Ry. to Lagrange	61	
		696
Louisville and Nashville R. R. to River Junction	407	
Plant Lines to Albany	116	
Central of Georgia Ry. to Macon	107	
Macon and Birmingham Ry. to Lagrange	105	
		735

Lines, New Orleans to Lagrange.	Miles.	Total miles.
New Orleans and Northeastern R. R. to Meridian	196	
Southern Ry. to Selma	103	
Western of Alabama Ry. to West Point	138	
Atlanta and West Point R. R. to Lagrange	16	
		453
New Orleans and Northeastern R. R. to Meridian	196	
Alabama Great Southern Ry. to Birmingham	153	
Central of Georgia Ry. to Opelika	129	
Western of Alabama Ry. to West Point	22	
Atlanta and West Point R. R. to Lagrange	16	
		516
Illinois Central R. R. to Jackson	183	
Alabama and Vicksburg R. R. to Meridian	96	
Southern Ry. to Selma	103	
Western Ry. of Alabama to West Point	138	
Atlanta and West Point R. R. to Lagrange	16	
		536
Illinois Central R. R. to Jackson	183	
Alabama and Vicksburg R. R. to Meridian	96	
Alabama Great Southern Ry. to Birmingham	153	
Central of Georgia Ry. to Opelika	129	
Western Ry. of Alabama to West Point	22	
Atlanta and West Point *R. R. to Lagrange*	16	
		599
Illinois Central R. R. to Winona	271	
Southern Ry. to Birmingham	208	
Central of Georgia Ry. to Opelika	129	
Western Ry. of Alabama to West Point	22	
Atlanta and West Point R. R. to Lagrange	16	
		646

The distances by the above lines range from *425 miles* by the short line, that involved in this case, to *735 miles* by the longest line, that by the Louisville and Nashville Railroad via River Junction.

Witnesses for the carriers testified to about the same number of lines that could be formed from New Orleans to Atlanta, and that all of those lines were practicable lines and competitors of the short line involved in this case—conceding, however, that the bulk of the traffic passed over this short line. The distances by those lines from New Orleans to Atlanta range from *495 miles* by the short line involved in this case, to *882 miles* by a line via the Illinois Central to Jackson, Tenn., and thence via Nashville and Chattanooga to Atlanta.

Mr. Knott testified that this last-named line, *822 miles in length*, was a practicable line, and a competitor of the short line. The longest of the 11 lines which we have given above from New Orleans to Lagrange is only *735 miles*, about 150 miles shorter than the distance of the line given by Mr. Knott over the Illinois Central via Jackson, Tenn., to Atlanta. If, as testified by Mr. Knott, this *822-mile* line is a practicable and competitive line on traffic from New Orleans to Atlanta, then all the above 11 lines are practicable and competitive lines from New Orleans to Lagrange.

The railroad officials, witnesses for the defendants, testified that all the lines from every direction that can be formed to Atlanta can also be formed to Lagrange, with either the Atlanta and West Point or the Macon and Birmingham road as terminal carriers, and they further admit that the agents of all these lines employed in soliciting business to Atlanta also solicit business to Lagrange.

(See testimony of R. E. Lutz, in answer to cross-interrogatories 80 and 81, Rec. 368.)

Lagrange is, therefore, a competitive point and entitled to the benefit of competitive rates.

CHAPTER XXV.

Excessiveness of Lagrange rates continued.

Cost of service to be considered in determining reasonableness of rates.

Distance adds to the cost of service and also to the fixed charges.

Cost of service to Lagrange, the shorter distance point, less than to Atlanta, Fairburn, Palmetto, Newnan, and Hogansville; therefore higher rates to Lagrange excessive.

The Commission, while recognizing the importance of distance, does not enjoin equal mileage rates.

The propositions would seem to be self-evident (1) that the cost of the service of transportation or movement is to be considered in determining the reasonableness of rates; (2) that the cost of the service of transportation depends largely on the distance or length of the haul; (3) that the distance from New Orleans to Atlanta, Fairburn, Palmetto, Newnan, and Hogansville being materially greater than to Lagrange, the cost of the actual service of transportation to Lagrange must be less than to those longer distance points.

It is not denied that distance, *other things being equal*, not only adds to the cost of movement or service of transportation, but also that the greater the length of a road the greater is the cost of its construction, and hence the greater the amount of what are known as "*fixed charges*," such as interest on capital invested, taxes, etc.

It is admitted:

(1) That, other things being equal, the *consumption of time* is greater the greater the length of the haul;

(2) That, other things being equal, the *consumption of fuel* is greater the greater the length of the haul;

(3) That, other things being equal, the *wear and tear* on locomotives, cars, track, roadbed, etc., is greater the greater the length of the haul;

(4) That, other things being equal, the cost of *keeping a road in repair* is greater the greater the length of the road;

(5) That, other things being equal, it requires *more locomotives and cars and more crews* for the running of trains on a long road than on a short one;

(6) That, other things being equal, distance adds to the cost of building roads, and therefore the *fixed charges*, such as interest on capital invested, taxes, etc., are greater the greater the length of the road; and

(7) That the *value of the service to the shipper*, as a general rule, is greater the greater the length of the haul.

It is thus seen that not only the expense of the actual service of transportation, but also the fixed charges, such as *interest on investment*, *taxes*, etc., are directly dependent on distance. These expenses and charges are necessarily *first to be determined* in making a reasonable rate. Distance, therefore, is a most important and controlling element in rate making.

This fact is universally recognized and constantly acted upon by all carriers. When rates are divided between carriers composing a through line, the proportion of each carrier is determined by mileage, and you can not find a tariff of rates which does not, as an almost invariable rule, provide higher charges as the length of the haul increases from station to station.

A rate can not be said to be reasonable in itself unless it pays the cost of movement or transportation of the traffic to which it is applied, and also its proportion of fixed charges, such as interest on bonds, taxes, etc.

If the rates for the longer haul by 13 miles to Hogansville, and the longer haul by 32 miles to Newnan, and the longer haul by 46 miles to Palmetto, and the longer haul by 53 miles to Fairburn, and the longer haul by 71 miles to Atlanta, are reasonable in themselves in the above sense, the legitimate inference is that the materially higher rates for the shorter haul to Lagrange are *excessive*.

Commission does not enjoin equal mileage rates.

Counsel for the carriers has contended in other cases that the Commission requires the carriers to charge *absolutely equal* mileage rates. There is no foundation for this charge.

The Commission, while recognizing the importance of distance, has not, in this case nor in any case, ordered equal mileage rates, but, on the contrary, has sustained the well-established rule recognized by all carriers, that *while the aggregate rates increase as the length of the haul increases, the rates per ton per mile decrease as the length of the haul increases.* On this point the Commission says, in the case of McMorran et al. *v.* Grand Trunk Railway Company of Canada et al. (3 I. C. C. R., 252), that—

> "Unless there be exceptional conditions which modify the rule, the rate per ton per mile grows less in proportion to the greater distance, while the aggregate of the rate increases with the greater distance;" and that "through rates *are not required to be made on the mileage basis*, but mileage is usually an element of importance, and due regard to distance proportions should be observed in connection with the other considerations that are material in fixing transportation charges."

This position of the Commission is conservative and manifestly correct, and nothing even squinting at *equal* mileage rates can be found in any ruling or decision or order of the Commission.

CHAPTER XXVa.

Insufficient or fallacious grounds upon which it is claimed that the Lagrange rates are reasonable.

The Lagrange rates are claimed by defendants to be reasonable on the following insufficient grounds:

(*a*) That they are combination of a reasonable through rate from New Orleans to Atlanta and a reasonable local rate from Atlanta back to Lagrange. *This we have shown* to be a *proof of excessiveness.* The combination is, moreover, *not the lowest combination.*

(*b*) That the rates from New Orleans to Lagrange are not higher per ton per mile than rates *charged by wagons and ox carts in the dim past* before the advent of railways. *Wagon rates can shed no light on the reasonableness of rail rates. There is no analogy between the two modes of transportation.*

(*c*) That they are lower than rates which would result from dividing the haul to Lagrange into four parts and combining the separate local rates of the defendants for these four hauls. *This we have shown to be no evidence of their reasonableness.*

(*d*) That traffic has moved under these rates to Lagrange; in other words, THAT THESE RATES ARE SIMPLY NOT PROHIBITORY. It is well settled that traffic will move under rates, no matter how excessive, provided they are not absolutely prohibitory.

(*e*) That Lagrange, *by virtue of her inherent force as a natural trade center*, has grown to some extent although handicapped by these excessive and discriminatory rates.

(*f*) Comparison of rates for the *425 miles* from New Orleans to Lagrange with rates for hauls of *from 527 to 1,161 miles* from Louisville, Baltimore, Philadelphia, New York, and Boston.

CHAPTER XXVb.

Opinions of railroad officials that Lagrange rates are reasonable.

These opinions naturally biased in favor of their own action and practices.

Reliance is placed largely upon the OPINIONS of railroad officials as showing the reasonableness of the Lagrange rates and of the so-called system of which they are the product.

Aside from the fact that these opinions are based on the insufficient reasons set forth in the preceding chapter, it is evident that railroad officials, however honest and intelligent, in testifying in these cases are subject to strong bias.

These witnesses are for the most part the very men who have made and are responsible for the rates in question. Where this is not the case, they are makers of rates on other roads and *are interested in the question.* They are naturally strongly biased in favor of their own action, and when they give their opinion as to the reasonableness of rates and as to other matters involved in the case, *those opinions are to be viewed and weighed in the light of the fact that they are opinions of interested parties naturally strongly biased.*

We do not intimate that these witnesses are dishonest, but only that they are human and subject to the human infirmity of bias. The law recognizes this human weakness and allows the fact of interest of a witness in a matter in issue to be given in evidence and considered by courts and juries.

As said by the circuit court in the "Chattanooga case," "there is in this no impeachment of the integrity of anyone. *It is not a question of intention, but whether the thing done is in contravention of the statute.*" (85 Fed. Rep., 110.)

CHAPTER XXVI.

Excessiveness of Lagrange rates continued.

The rates to Atlanta are reasonably high notwithstanding competition.

Therefore (1) materially higher rates for materially shorter haul to Lagrange are excessive.

Therefore (2) competition can not justify the discrimination shown in this case.

The ground upon which the plea of competition is based is that it forces carriers to charge to competitive points *rates lower than they might otherwise exact.* In the absence of competition carriers have no right to charge more than reasonable rates. Therefore competition, it is claimed, forces carriers to charge less than reasonable rates.

If the rates to competitive points are reasonably high in themselves, notwithstanding competition, then competition is no justification for a greater charge for the shorter haul. This proposition can not be successfully controverted.

We contend that the rates from New Orleans to Atlanta in question in this case are reasonably high in themselves—that is, they not only pay the cost of transportation or movement of the traffic to Atianta, but also a reasonable remuneration in excess of such cost, and that competition not having reduced them below this reasonable level is no justification for the materially higher rates for the shorter haul by 71 miles to Lagrange, and that therefore these higher rates to Lagrange are necessarily *excessive.*

If the materially lower rates for the materially longer haul to Atlanta yield the carriers a reasonable remuneration in excess of the cost of service, then the *same* rates to the shorter distance point, Lagrange, would yield a remuneration *in excess* of such reasonable remuneration, and rates to Lagrange, which are *materially higher* than rates to Atlanta, would yield *a still greater remuneration in excess* of such reasonable remuneration.

That the Atlanta rates are reasonably high in themselves, *notwithstanding competition*, is clear from the following facts:

1. The proof shows that *the bulk of the traffic of the defendants is competitive traffic*, and that under these rates to Atlanta and rates on the same basis to other competitive points applied to this competitive traffic, the business of the defendants has proven fairly remunerative.

2. The proof shows that the Atlanta rates were established by *agreement* between the carriers. The agreement was entered into for the purpose of doing away with unreasonably low rates, the product of competition, and substituting therefor reasonably remunerative rates.

3. The presumption is that the compensation charged for a service or thing is reasonably remunerative.

4. The rates in question from New Orleans to Atlanta *have been maintained for twelve years or more.*

5. The rates from New Orleans to Atlanta yield rates per ton per mile the average of which is from two to three times as high as the average revenue per ton per mile on roads in all sections of the country.

These five grounds upon which we base our claim that the Atlanta rates are reasonably high in themselves, notwithstanding competition, will be discussed in the following chapter of this argument.

CHAPTER XXVII.

Atlanta rates are reasonably high.

The prima facie presumption is that rates charged will be reasonably high.

The first ground upon which we base the proposition that the Atlanta rates are reasonably high is the *prima facie* presumption that the compensation charged for a service or thing is reasonably remunerative.

This presumption rests upon the same principle or belongs to the same class of presumptions as the presumption of *sanity*. An individual who would render services for a sum not reasonably remunerative—and that, too, not "incidentally, but for a long series of years"—would be held to be an incompetent business man, if not *non compos mentis*. There is no reason why the same rule should not be applied to carriers.

In the "Chattanooga Case" Judge Severens says on this point:

> "The charges accepted for the longer haul may be referred to for the purpose of considering the reasonableness of the charges made for the shorter haul. *Such comparisons are applied to every other kind of business*, and the fact that there may be competition in such business would not be a controlling consideration, *for the presumption would always be that the compensation charged for the service or thing is sufficient to be reasonable.*" (85 Fed. Rep., bot. p. 114.)

This presumption, that the compensation charged for a service or thing is reasonably remunerative, acquires increased

force and becomes conclusive when the compensation has been charged for a long series of years. The testimony in this case of railroad officials is that the rates from New Orleans to Atlanta have been in force *twelve years or more.*

The following is the extract from the testimony, on this point, of Mr. George P. Biles:

> "Cross-question 1. How long, or about how long, has the system of rates now in force to Atlanta from New Orleans existed, and state whether the rates under that system have been substantially the same during that time?
>
> Answer. So far as my information goes, the present adjustment of rates from New Orleans has been in effect *for about twelve years*, and has remained *practically intact*, except that the rates on classes B, C, D, and F have been *slightly* modified.
>
> Cross-question 2. How long have the rates from New Orleans to Atlanta been substantially the same as they are now?
>
> Answer. The rates from New Orleans have been, to the best of my information, substantially the same as now for twelve years."

Testimony of other witnesses is uniformly to the same effect. (See answer of J. M. Culp to cross-question No. 2, Rec., 387.)

CHAPTER XXVIII.

Atlanta rates are reasonably high, continued.

Atlanta rates established by agreement.

The presumption that the Atlanta rates are reasonably remunerative is further strengthened by the fact that they were originally established by agreement between the carriers.

Mr. G. P. Biles, general freight agent of the Cincinnati, New Orleans and Texas Pacific Railway Company, testifies:

> "The present rates from New Orleans to Atlanta are made the same as those in effect from Memphis, Tenn. * * * I believe it was *done by joint action of all the carriers interested.*" (Answer to cross-interrogatory 7, Rec., 394.)

The testimony of other witnesses shows that the rates from New Orleans to Atlanta were established by agreement between the carriers as members of the Southern Railway and Steamship Association, which association established rates to all competitive points in the Southern territory for a long period of time prior to October, 1895.

Unhealthy competition, resulting in what are known as "rate wars," may cause competing lines of transportation to enter into an agreement as to the rates to be charged by them, or, in other words, may bring about such agreement. The very object of the agreement, however, it will be seen, is to do away with competition which results in *ruinously low rates.*

Mr. J. M. Culp, traffic manager of the Southern Railway, testifies that the Southern Railway and Steamship Association, by which the rates to New Orleans were established—

> "Was formed as a means of preventing the roads *destroying each other by competition.*" (Answer to cross-question 11, Rec., 388.)

The object, then, of these railway associations and their agreements respecting rates is to get rid of the "ruinously low rates resulting from competition, and to provide for reasonably remunerative rates." *When carriers come together to agree upon rates which will be reasonably remunerative, there is nothing to prevent the accomplishment of that end.*

This court has held in the case known as the "Joint Traffic Case" (171 U. S., 505) that when carriers come together and agree upon the rates to be charged by them, *those rates will be higher than rates which are the result of active competition. This proposition is the basis of the decision of the court in that case.*

In that case, in speaking of the agreement in the Trans-Missouri Case (166 U. S., p. 209) and of the agreement in the Joint Traffic Association Case, this court says:

> "The natural and direct effect of the two agreements is the same, viz, *to maintain rates at a higher level than would otherwise prevail.*" (171 U. S., 565.)

And again:

> "The agreement" (Joint Traffic Association agreement) "*affects interstate commerce by destroying competition and by maintaining rates above what competition might produce.*" (171 U. S., 569.)

And again, the court speaks of the Joint Traffic Association agreement as one made—

> "For the purpose of *stifling competition* among themselves" (the competing lines), "and of thus keeping their rates and charges higher *than they might otherwise be under the laws of competition.*" (171 U. S., 571.)

We thus have the sanction of the highest judicial tribunal in this country, if not in the world, for our proposition, that, where rates are fixed by agreement, they will be higher than rates which might be produced under "the laws of competition."

The carriers are simply stultifying themselves in claiming that, when they come together to get rid of the ruinous effects of competition and to agree upon rates which will be reasonable, they will deliberately establish unremunerative rates and keep those rates in force twelve or fifteen years.

As indicating that competition affects the rates notwithstanding they are made by agreement, the circuit court of appeals for the fifth circuit, in the case of the Interstate Commerce Commission against the Western and Atlantic R. R. Co. et al., and two other cases (93 Fed. Rep., p. 88), says:

> "But *it is not shown or reasonably suggested* on what ground, or for what consideration, the competing carriers consented to accept a lower rate to these longer distance points than they charged to the shorter distance points, if they could just as well have agreed and contracted to charge as great or greater rates to the longer than to the shorter distance points." (Italics mine.)

We respectfully suggest that when carriers come together to agree upon rates to *large trade centers* they will naturally be controlled by considerations of reasonableness to a greater extent than when they establish rates to *comparatively insignificant local stations served by the road of one of such carriers alone.*

When carriers come together to agree upon rates to these trade centers, they will be influenced to establish rates not unreasonbly large on the ground of self-interest, if on no higher ground.

Among other things, exorbitant rates to large, influential trade centers *would cause the building by those trade centers of other lines of transportation.* Moreover, presidents and other officials and stockholders of roads serving these influential trade centers are frequently, if not generally, the owners of large properties and business interests at those trade centers,

are therefore directly interested in their continued growth and prosperity. Again, the interests of the roads will be promoted by the continued prosperity and building up of the trade centers, because it will result in an increase of the tonnage of traffic transported to those trade centers. The business and prosperity *of shippers* to these trade centers will also be promoted by reasonable rates, and this, too, will add to the revenue of the carriers. These and other considerations will induce competing carriers to establish rates to large trade centers not unreasonably high.

At comparatively insignificant local stations, however, on one line of railway alone, like those involved in the cases, *supra*, before the circuit court of appeals, the carriers are at liberty to charge *all the traffic will bear. The witnesses for the roads testified in those cases that the rates to the shorter distance local stations were reasonable because "traffic moved under them to those stations"—in other words, because the rates were simply not prohibitory.*

These comparatively insignificant local stations on one line of road alone have, as the homely saying is, "to grin and bear it." They are not sufficiently powerful or influential to build or warrant the building of other lines of transportation, and officials and stockholders of railroads are not, as a rule, personally interested in their growth and prosperity.

In any event, if competition should to some extent influence the rates established by agreement between the carriers, it *is not reasonable to suppose that it would cause those rates to be reduced below a reasonable remunerative level, particularly in view of the fact that the very object of the agreement is to substitute reasonably high rates in place of unreasonably low rates, the product of competition.*

CHAPTER XXIX.

Atlanta rates are reasonably high, continued.

Atlanta rates and rates on the same basis to other competitive points, when applied to the bulk of the traffic of the defendants, have proven fairly remunerative.

The testimony of railroad officials is uniform to the effect that the competitive traffic of the defendants largely exceeds its noncompetitive local traffic.

T. J. Hunter, auditor of the Western Railway of Alabama and the Atlanta and West Point Road, in Exhibit 4 to his deposition before the Commission, gave the following as the tonnage of traffic to Atlanta and Lagrange, respectively, for the year ending June 30, 1895:

To Atlanta, 6,773 tons.

To Lagrange, 100 tons.

(Rec., 142.)

The same witness (Hunter), in Exhibit C to his deposition in the case before the court, gave the following as the total tonnage of traffic from all points for the month of January, 1899, to competitive and noncompetitive stations on the Western Railway of Alabama and the Atlanta and West Point road, the competitive stations being Selma, Montgomery, Opelika, Newnan, and Atlanta:

Total traffic to—	Tons.
Atlanta	7,539
Newnan	1,829
Opelika	2,672
Montgomery	10,391
Selma	3,348
Total to competitive points	25,779
Total to local points	8,269
Grand total	34,048

(Rec., 354–356.)

From this statement it appears that the tonnage of traffic to these five competitive points is three times as great as the tonnage of traffic to all the numerous local stations on these roads, including Lagrange.

Mr. Lutz testifies, in answer to cross-interrogatory 64 in his deposition in the case in court, that "the *through traffic is greater in amount and volume than the local.*"

Under these competitive rates applied to Atlanta and other points treated as competitive between New Orleans and Atlanta, the business of the defendant roads has proved fairly remunerative.

On this point the Commission finds:

> "Each of the defendant roads is solvent. For the year ending June 30, 1895, the Louisville and Nashville, a large system, of which only a small part is involved in this case, paid interest on its large funded debt (over $79,000,000) and discharged its other accruing liabilities. The Western of Alabama for that year paid interest on $1,543,000 bonded debt and 2 per cent dividend on $3,000,000 capital stock and had a considerable surplus on hand. The Atlanta and West Point paid in that year 6 per cent dividend on $1,232,200 capital stock and 6 per cent interest on the same amount of 'certificates of indebtedness,' and had a considerable sum remaining."

(See Report and Opinion of Commission, p. 15, Rec., 37.)

The Atlanta and West Point road, in fact, for the year ending June 30, 1895, paid *12 per cent dividends* on its capital stock of $1,232,200. It paid 6 per cent dividends (*eo nomine*) on that stock and in addition 6 per cent interest on the same amount on what are termed "certificates of indebtedness." Those certificates of indebtedness represent earnings of the road, which, instead of being paid to the stockholders, were used in building bridges and other improvements on the road, and they were issued to the stockholders, and the 6 per cent

interest thereon was paid to the stockholders, thus making the amount paid to the stockholders 12 per cent on the capital stock.

It can not be claimed that rates which, when applied to three-fourths of the business of these carriers, yield such results are unreasonably low.

CHAPTER XXX.

Atlanta rates are reasonably high, continued.

Rates per ton per mile under Atlanta rates much higher than revenue per ton per mile of roads in Southern territory and throughout the United States.

That the rates from New Orleans to Atlanta are reasonably high is further apparent from the fact that they yield rates per ton per mile the *average* of which is much higher than the average revenue per ton per mile of all roads not only in the Southern territory, but also throughout the United States.

The class rates *per ton per mile* under the rates from New Orleans to Atlanta are as follows:

Rates per ton per mile from New Orleans to Atlanta.

1.	2.	3.	4.	5.	6.	A.	B.	C.	D.	E.	H.	F.
4.15	3.56	.31	2.58	.21	.17	.97	1.25	.97	.81	.18	1.97	1.61

The average of these rates per ton per mile to Atlanta is a *little over 2 cents*, which is *more than twice* as large as the average of the revenue per ton per mile on roads throughout the United States from the year 1890 to 1897, both inclusive, which latter average is *.864 cent*, or, in other words, a little over *eight-tenths of 1 cent.* (Rec., 244.)

This average of the rates per ton per mile to Atlanta, *2 cents*, is also a little *over three times* as large as the average of the revenue per ton per mile for the year 1897 on roads in West

Virginia, Virginia, North Carolina, and South Carolina, which latter average is *.648 cent*, or, in other words, a fraction over *six-tenths of 1 cent.* (Rec., 244.)

The average of the rates per ton per mile to Atlanta, *2 cents*, is also *more than twice as large as* the average of the revenue per ton per mile for the year 1897 on roads in Kentucky, Tennessee, Mississippi, Alabama, Georgia, and Florida, which latter average is *.864 cent*, or, in other words, a fraction over *eight-tenths of 1 cent.* (Rec., 244.)

CHAPTER XXXI.

Atlanta rates are reasonably high, continued.

Summary of situation.

To sum the matter up, the facts and every reasonable presumption tend to show that the rates from New Orleans to Atlanta are reasonably high—that is, yield the carriers a reasonable compensation in excess of the cost of service.

(1) *They were in the first place established by agreement, which agreement was entered into to avoid the ruinously low rates produced by active competition.*

(2) *They have been maintained for twelve years or more.*

(3) *During this twelve years or more they have been applied to the bulk of the traffic hauled by the defendants, and under them the defendants have prospered financially.*

(4) *They yield a rate per ton per mile from two to three times as high as the average revenue per ton per mile of roads in all sections of the country.*

The situation in a nutshell is that at points like Atlanta, where competition is met, the carriers have been compelled to get together and agree upon reasonable and not excessive rates, and at local points, or points which they agree to treat as local, they are under no such compulsion, and charge *all that the traffic will bear*, or under which it will move—in other words, rates which are simply not prohibitory.

The witness, Jesse M. Smith, testifies that at local points "*there is nothing to prevent the carrier from fixing and maintaining rates as high as the traffic will bear, if it so desires.*" (Rec., 254.)

CHAPTER XXXII.

Excessiveness of Lagrange rates, continued.

The other horn of the dilemma.

If Atlanta rates are unreasonably low, there must be a deficiency thereunder which has to be made up by an increase of rates to Lagrange and other points, and this results in excessive rates to Lagrange.

Competition can justify neither excessive rates to local points nor unreasonably low rates to competitive points.

This court has held in the "Nebraska maximum-rate case" that intrastate or domestic traffic can not be taxed with a deficiency resulting from unreasonably low rates on interstate traffic.

The rates to Atlanta are either reasonably high or unreasonably low.

If, notwithstanding competition, they are reasonably high, then, as we have shown, competition is no justification for the materially higher rates to Lagrange.

If, on the other hand, they are unreasonably low, there must result a deficiency under them, to be made up by higher rates on other traffic.

Claim of Mr. Lutz that Atlanta rates are starvation rates.

Mr. Lutz, traffic manager of the Western Railway of Alabama and the Atlanta and West Point road, however, testified on cross-examination before the Commission:

> "If we were to accept on local business rates proportionately as low as we accept on through business, it would simply mean *starvation*." (Rec., top p. 105.)

And again:

> "If we made rates there (to Lagrange) on the same basis as to Atlanta, we could not sustain the road. *We could not live* if we made rates on the same basis (to Lagrange) as to Atlanta." (Rec., mid. p. 110.)

Mr. Lutz thus expresses the opinion that the rates to Atlanta and other competitive points, or points treated as competitive, are, to use his forcible language, "*starvation rates*," and that the road could not "*live*" on rates to local stations proportionately not higher than the rates charged to Atlanta and other points treated as competitive.

Mr. Lutz further testified, on direct examination before the Commission, that for the year ending June 30, 1895, the traffic from New Orleans to Lagrange amounted to only $262.70, while to Atlanta for that year it amounted to $13,470.19. (Rec., 103.)

Mr. Lutz also stated before the Commission in this connection that—

> "The revenue derived from the traffic from New Orleans to Atlanta is *about fifty times as much* as from New Orleans to Lagrange." (Rec., 103.)

The foregoing extracts from the testimony of Mr. Lutz, considered together, present this phenomenal, *if not miraculous*, situation: THE ROADS LIVE ON STARVATION RATES APPLIED TO TRAFFIC TO ATLANTA, WHILE THEY COULD NOT LIVE

ON THE SAME RATES APPLIED TO TRAFFIC TO LAGRANGE, ALTHOUGH THE TRAFFIC TO ATLANTA IS SIXTY TIMES AS LARGE IN AMOUNT AS THE TRAFFIC TO LAGRANGE.

Competition can not justify unremunerative rates to competitive points.

Conceding, however, for argument's sake, that Mr. Lutz is correct, and that the rates to Atlanta and to other points treated as competitive are "*starvation rates*," and that the roads could not live if those rates were applied to local traffic, it must follow that those starvation rates result in a deficiency of revenue, which, *if the roads live*, must be made up by an increase of rates to other points.

We contend that competition can justify neither unreasonably high rates to noncompetitive points nor unreasonably low rates to competitive points, the latter rates resulting in a deficiency which must be taxed upon traffic to noncompetitive points.

In support of this proposition we cite the opinion of this court in *Smyth* v. *Ames*, known as the "*Nebraska Maximum Rate Case*," reported in 169 U. S., p. 541.

In that case the appellee contended that the inadequacy of the local or domestic rates in question was made up by the rates on interstate traffic, and that this justified the inadequacy of the domestic or local rates. On this point the Supreme Court says:

> "If we do not misapprehend counsel, their argument leads to the conclusion that the State of Nebraska could legally require local freight business to be conducted even at an actual loss, if the company earned on its interstate business enough to give it just compensation in respect to its entire line and all its business, interstate and domestic. We can not concur in this view. In our judgment it must be held that the reasonableness or unreasonableness of rates prescribed by a State for the transportation of

persons and property wholly within its limits must be determined without reference to the interstate business done by the carrier or to the profits derived by it. The State can not justify unreasonably low rates for domestic transportation, considered alone, upon the ground that the carrier is earning large profits on its interstate business, over which, so far as rates are concerned, the State has no control. *Nor can the carrier justify unreasonably high rates on domestic business upon the ground that it will be able only in that way to meet losses on its interstate business.* So far as rates of transportation are concerned, *domestic business should not be made to bear the losses on interstate business, nor the latter the losses of domestic business.*" (169 U. S., p. 541.)

In this connection we quote as pertinent the following extract from the opinion of *Judge Severens* in the "*Chattanooga Case*" (*85 Fed. Rep., p. 115*), and from the opinion of *Judge Goff* in the "*Behlmer Case*" (*83 Fed. Rep., p. 898*):

Judge Severens says:

"If carriers engage in a competitive struggle for business at a place where they meet, and underbid each other to a point which is not in itself remunerative, they can not turn back on the line and, taking advantage of the conditions existing at other localities, arising either from the fact that there is no opportunity for competition or *from the fact that by concert of the carriers there is none*, charge such rates for the shorter haul as shall make good their lack of profits in the competitive business. Such a course can not be sanctioned without 'tearing up by the roots' the whole scheme of the commerce act." (Italics mine.)

Judge Goff says:

"The appellees contend that the smaller charge for the greater distance is, in this case, of great importance to the city of Charleston (the longer-distance point), as well as to the section of country adjacent thereto, as by means thereof the merchants of that city are enabled

to build up a trade that otherwise would be lost to them. That may be true, but is not the same argument applicable to Summerville (the shorter-distance point) and other interior cities along the lines of the roads operated by the appellees between Charleston and Memphis? *In order to build up one locality we should not tear down many others; and justice to one section should not be purchased at the expense of another.*" (Italics mine.)

See also *E., T., &c., Ry. Co.* v. *I. C. C.* (181 U. S., p. 20).

CHAPTER XXXIII.

The order of the Commission.

It contains six subdivisions.

The order of the Commission contains six subdivisions. (Rec., 48–51.)

(1) The Commission found that the rates to Lagrange were excessive, or unreasonably high in themselves, in violation of section 1 of the law, and therefore ordered the defendants to cease and desist from charging unreasonable rates to Lagrange.

In *Interstate Commerce Commission* v. *Railway Company* (167 U. S., 479) the Supreme Court held that the Commission had no power to enforce section 1 of the law by prescribing reasonable maximum rates to be charged by carriers. The Commission, therefore, can only enforce section 1 *by forbidding the exaction of rates which it has found to be unreasonably high.* In the language of Judge Severens in the "Chattanooga case," the Commission only had the power to forbid "the continuance of an unlawful practice." (85 Fed. Rep., 110.)

Throughout the argument of the question as to the power of the Commission to prescribe reasonable rates under section 1 of the law, it was admitted by counsel for the carriers that the Commission had the power, under that section, to order carriers to cease and desist from charging rates found to be unreasonably high.

(2) In the second subdivision of its order the Commission directed the defendants to cease and desist from charging the specific rates (naming them) from New Orleans to Lagrange,

upon the ground that those rates were shown to be unreasonably high. This subdivision of the order is also under section 1 of the law.

(3) In the third subdivision of its order the Commission directed the defendants to cease and desist from charging from New Orleans to Lagrange *rates made up of the through rate for the haul from New Orleans through Lagrange to Atlanta, plus the local rate back to Lagrange.* This was on the ground that such a combination rate was unreasonable in itself and unduly prejudicial to Lagrange.

(4) In subdivision 4 the Commission ordered the defendants to desist from charging higher rates from New Orleans to Lagrange than they charged from New Orleans for the longer haul through Lagrange to Hogansville, or Newnan, or Palmetto, or Fairburn, Ga.

(5) In the fifth and sixth subdivisions of the order the defendants are required to desist from charging rates from Lagrange which result in an undue or unreasonable prejudice or disadvantage to Lagrange and which give an undue or unreasonable preference or advantage to merchants at Atlanta, Fairburn, Palmetto, Newnan, or Hogansville. These subdivisions of the order are under section 3 of the law forbidding undue preferences in rates as between different localities.

(6) The Commission being denied the power, as we have seen, to prescribe reasonable maximum rates, it then proceeds in its order to *recommend* that the class rates to Lagrange shall not exceed the class rates now in force to Atlanta, setting forth said class rates specifically, and also that the defendants "make corresponding reductions or relatively reasonable and just charges in commodity rates," namely, rates on sugar, etc.

CHAPTER XXXIV.

Power of the Commission to enforce sections 3 and 4 of the law recognized by this court.

In the case of the Interstate Commerce Commission *v.* The Cincinnati, New Orleans and Texas Pacific Railway Company (167 U. S., p. 506), this court, while denying power in the Commission to enforce section 1 of the law *by prescribing* rates to be charged by carriers, "maximum, minimum, or absolute," expressly recognizes the authority of the Commission to enforce the provision of section 3 of the law, forbidding undue preferences in rates as between localities, and the long and short haul rule of section 4.

In reference to these matters the court, after denying power in the Commission to prescribe rates, says:

> "But has the Commission no functions to perform in respect to the matter of rates; no power to make any inquiry in respect thereto? Unquestionably it has, and most important duties in respect to this matter. It is charged with the general duty of inquiring as to the management of the business of railroad companies, and to keep itself informed as to the manner in which the same is conducted, and has the right to compel complete and full information as to the manner in which such carriers are transacting their business. And with this knowledge it is charged with the duty of seeing that there is *no violation of the long and short haul clause;* that there is no discrimination between individual shippers, and that nothing is done by rebate or any other device to give preference to one as against another; that *no undue preferences are given to one place or places* or individual or class of individuals, but that in all things *that equality of right which is the great purpose of the interstate-commerce act shall be secured to all shippers.*"

CHAPTER XXXV.

Court may modify order by enforcing one or more subdivisions.

In the case known as the "Social Circle Case" (162 U. S., 184), the order of the Commission had two subdivisions. In one it forbids the charging of higher rates from Cincinnati to Social Circle, the shorter distance point, than were charged for the longer haul through Social Circle to Augusta, and in the other it directed that the rate from Cincinnati to Atlanta should be reduced from $1.07 to $1 per 100 pounds. The circuit court of appeals at New Orleans rendered a decree enforcing the first subdivision of the order only. This court sustained this decree of the circuit court of appeals.

Proceedings before the court de novo, and the orders of the Commission may be modified by the courts.

It is well settled, moreover, that in proceedings before the courts to enforce orders of the Commission the matter is heard *de novo*, and the proceeding is an "original and independent proceeding," based on new pleadings and new evidence, and it is the duty of the courts to "do justice as courts of equity upon the entire body of the evidence."

Social Circle case (56 Fed. Rep., 934, 935)

I. C. C. *v.* C. N. O. & T. P. Ry. Co. et al. (64 Fed. Rep., 984, 985).

Shinkle, Wilson & Kries Co. et al. *v.* L. & N. R. R. Co. (62 Fed. Rep., 693).

I. C. C. *v.* Ala. Mid. Ry. Co. (168 U. S., 175).

In the "Alabama Midland case" (168 U. S., 175) this court says:

> "It has been uniformly held by the several circuit courts and the circuit courts of appeal in such cases that they are not restricted to the evidence adduced before the Commission nor to a consideration merely of the power of the Commission *to make the particular order in question*, but that additional evidence may be put in by either party, and that the duty of the court is to decide as a court of equity upon the entire body of the evidence."

That the court may modify an order made by the Commission, so as to *adapt it to the ends of justice under the entire body of the evidence before the court*, seems clear from the language of this court above quoted, namely, "that the court is not confined to a consideration merely of the power of the Commission *to make the particular order in question*," but "is to decide, as a court of equity, *upon the entire body of the evidence*."

CHAPTER XXXVI.

The order of the Commission—How it should be complied with.

Lagrange rates being excessive should be reduced to at least the level of Atlanta rates.

If, as we have endeavored to show, the Lagrange rates are excessive, the order of the Commission should be complied with by reducing the Lagrange rates to at least the level of the Atlanta rates.

This will bring the rates in conformity with the rule of the fourth section, by doing away with the higher rates for the shorter than the longer haul.

The reduction of the Lagrange rates to the level of the Atlanta rates will also do away, to a certain extent, with the undue preference in favor of Atlanta and the unjust prejudice to Lagrange resulting from the present adjustment of rates, and will thus measurably, if not entirely, bring them in conformity with the provision of section 3 of the law, forbidding undue preferences in rates as between different localities.

This will be seen from the fact that if the rates to Lagrange are no higher than to Atlanta, Lagrange merchants can lay down goods in territory intermediate and equidistant from Lagrange and Atlanta at aggregate rates not higher than those on which Atlanta merchants can reach such territory.

CHAPTER XXXVII.

Objections to reduction of Lagrange rates.

Claim that reducing the Lagrange rates will necessitate reductions in rates to all strictly local stations.

Lagrange a competitive point, and therefore a reduction in Lagrange rates will not call for a reduction in rates to strictly local stations.

If Lagrange rates alone are reduced, loss will be insignificant.

The orders of Commission do not affect intrastate traffic.

The contention in behalf of the carriers in this case is that a reduction in the Lagrange rates is not practicable because it would necessitate a corresponding reduction to all local stations and would thus result in an unreasonable or ruinous loss of revenue to the roads.

This contention rests upon the *assumption that Lagrange is itself a strictly local station*, and that, therefore, a reduction in Lagrange rates must necessarily be accompanied by a corresponding reduction in rates to all local stations.

This assumption, however, is without foundation, because, as we have shown, *Lagrange is not a strictly local station*, but is situated on two distinct roads, and, as testified by the railroad officials, all the lines from every direction which can be formed to Atlanta can also be formed to Lagrange, and all these lines, through their agents, solicit and compete for business to Lagrange as well as for business to Atlanta. (See Chapter XXIV.)

Lagrange being a competitive point, or being entitled to treatment as a competitive point, the reduction of the Lagrange rates will not call for a reduction in rates to the strictly local stations. The loss of revenue, therefore, if any, will only be that which will result from the reduction in the rates on the traffic to Lagrange alone. This loss will be trivial, a mere bagatelle to the roads, and should not be allowed to stand in the way of the removal of the discrimination against Lagrange.

Mr. T. J. Hunter, auditor of the Atlanta and West Point Railroad and the Western Railway of Alabama, was called upon, on cross-examination, to furnish a statement showing the loss which would result to his roads on business from New Orleans to Lagrange if the same rates were charged to Lagrange as to Atlanta. He furnished that statement for the year ending April 30, 1899, as "Exhibit D" to his deposition. *That exhibit shows that the total loss for that year would have been only the insignificant sum of $48.02.* (Rec., 356.)

"Exhibit D" to Hunter's testimony in court.

Revenue to Lagrange under existing rates	$188.52
Revenue to Lagrange based on Atlanta rates	140.50
	48.02

Unreliable and exaggerated estimate of loss if rates to all local stations were reduced to the basis of rates to competitive points.

On this point we quote below from page 22 of the "Report and Opinion" of the Commission in this case (Exhibit "C" to the Bill of Complaint):

> "Assertion is made that if rates at all local stations on the line were adjusted so as not to exceed rates to and from competitive points the result would be a loss of $63,331.56. *The items on which these calculations were based are not in evidence*, the losses so stated are necessa-

rily estimated and assumed, and, besides, *they embrace traffic and circumstances which do not relate to traffic and transportation from New Orleans to Lagrange and Atlanta, and which are not within the scope of this proceeding.* If the figures in testimony relating to revenue from New Orleans traffic to Atlanta and Lagrange are correct, defendants would, by *increasing rates to Atlanta* to the present Lagrange rates from New Orleans, without the concurrent action of competing lines to Atlanta, lose $13,470.19, more or less, in a given year, for shippers would doubtless choose the cheaper routes. On the other hand, if defendants *should reduce* New Orleans-Lagrange rates to the New Orleans-Atlanta rates, they would by such action only lose the difference between the present Atlanta and Lagrange rates, and the total earnings on freight from New Orleans to Lagrange are stated in testimony to have been only $262.70." (Rec., 43, 44.)

Orders of Commission do not affect intrastate traffic.

It is constantly to be borne in mind that the orders of the Commission do not apply to *intrastate rates*, but only to *interstate rates*. They do not apply to rates between the stations in the State of Georgia, for example, from Atlanta to Fairburn, or to Palmetto, or to Newnan, or to Hogansville, or to Lagrange, or to West Point, or between any of those stations, nor to stations in Alabama between Opelika and Montgomery, or Opelika and Mobile, or Montgomery and Mobile, etc.

We contend, however, that a reduction of the Lagrange rates, so as to place her in the position of relative equality with her competitors, Atlanta and Opelika, will promote her prosperity, and in this way increase her tonnage of traffic to such an extent that the roads, instead of losing revenue, will eventually, if not immediately, realize an increase of revenue. This will be made the subject of the following chapter.

CHAPTER XXXVIII.

The order of the Commission continued.

Reduction of Lagrange rates will not eventually result in loss of revenue to the carriers.

Such reduction will increase the prosperity of Lagrange and thereby increase its tonnage of traffic.

Opinion on this subject of this and other courts.

Views of Aldace F. Walker on this subject.

As stated in the preceding chapter, the main, if not only, objection to compliance with the order of the Commission by reducing the rates to Lagrange is that it will result in an unreasonable, if not ruinous, loss of revenue to the carriers.

The railroad officials examined as witnesses always express the opinion that such will be the result, but they invariably ignore the well-established facts that lowering the rates to the shorter distance points so as to place them on a basis of relative equality with their competitors in business, the longer distance competitive points, *will increase the tonnage to the shorter distance points and thus augment the revenue of the carriers.*

Reduction of rates to shorter distance points so as to place those points on a basis of relative equality with surrounding points in the matter of rates will increase the tonnage of traffic to the shorter distance points in two ways; *first*, by lowering the price of goods at those points and thus increas-

ing their consumption, and, *second*, by promoting the growth and prosperity of such points, and *thus increasing the number of consumers.*

It would seem unnecessary to cite authority or to introduce testimony in support of so plain a proposition. We will ask attention, however, to the views on this subject of THIS COURT, and also of the Hon. Aldace F. Walker, who for many years previous to his death was high authority in railway circles on all matters pertaining to the business of transportation.

Views of this court.

In the case known as the "*Joint Traffic Association case*" (171 U. S., 505) this court, Mr. Justice Peckham delivering the opinion, says:

> "The result of lower rates is generally a *greater demand* for the articles transported, and this greater demand can only be gratified by *a larger supply*, the furnishing of which increases commerce." * * * (171 U. S., pp. 576.)

This proposition, that lower rates increase the demand for articles transported and consequently *the tonnage of such articles transported*, is the basis of the decision of this court in that case, it being held that the contract or agreement of the Joint Traffic Association under consideration tended to stifle competition and thus maintain high rates and thereby to restrain interstate commerce *in lessening the tonnage of such commerce.* In other words, the basis of the decision of this court was that the agreement of the association prevented a reduction of rates on interstate commerce, and in so doing *lessened the amount of such commerce which would be transported under low rates.*

In *Chicago, etc.*, v. *Wellman* (143 U. S., 343) this court says:

> "May it not be possible—*indeed, does not all experience suggest a probability—that a reduction of rates will increase the amount of business and therefore the earnings?*"

Opinion of Aldace F. Walker.

Mr. Aldace F. Walker, who was at one time a member of the Interstate Commerce Commission, but resigned that position to accept service from a railway association, and who became an authority of great weight in railway circles, in an opinion delivered by him as a member of the Commission, says:

> "The chief obstacle in the way of a general compliance with the rule of the fourth section is found in the question of revenue. *Carriers in the Southern States employ that argument in every case when conformity to the law is suggested* * * *. They insist that any reduction of rates means loss of revenue * * *. But it is not clear that the application of the general rule of the law would involve *permanent* loss of revenue. *The stimulus given to business at intermediate points will increase traffic largely. That proposition has been so often practically demonstrated that no intelligent observer can reject it* * * *. At the present the amount shipped to intermediate points is relatively very small. Giving such points the rates charged at more distant places, if adopted and maintained as a general principle, would necessarily encourage local industry and enterprise."
>
> (In re tariffs and classifications of Atlanta and West Point Railroad et al., 3 I. C. C. R., pp. 48, 49.)

Opinion of Judge Severens:

> "The court is very strongly inclined to the belief that *the interests of the carriers* would in the long run be better promoted by adhering more closely to the rules of the statute, and public policy would also be advanced not only in the encouragement which would thus be given to the distribution of commerce and population, but also in extending that *equality of privilege* which it is one of the prime objects of the act to regulate commerce to promote."
>
> (85 Fed. Rep., p. 113.)

CHAPTER XXXIX.

Lower rates will increase tonnage of traffic of carriers, continued.

Testimony of Lagrange merchants and business men on this point.

The Lagrange merchants and business men examined as witnesses in this case all testify—

(1) That transportation rates enter into and affect the prices at which they can sell their goods to consumers.

(2) That a reduction of rates to Lagrange so as to make them not higher than the Atlanta rates "will enable Lagrange merchants to sell goods cheaper than they now can, and that this will enable them to compete with the favored cities that are now underselling Lagrange merchants."

(3) That the lower the prices of goods the greater is the consumption.

(4) That low rates to a locality will induce immigration to and the investment of capital at such locality, and will promote its growth and prosperity in every respect, while relatively high rates will have the contrary effect.

(5) That, consequently, a reduction in the Lagrange rates so as to make them not higher than the Atlanta rates will increase the tonnage of traffic to Lagrange and correspondingly augment the revenue of the carriers.

(See testimony of Lagrange merchants and business men, Messrs. Fuller E. Callaway, E. R. Bradfield, J. H. Edmundson, W. V. Gray, J. E. Dunson, H. H. Childs, B. H. Seay,

M. L. Flemming, H. D. Glanton, H. V. Truitt, and T. S. Bradfield, in answer to direct interrogatories from 21 to 25, both inclusive.) (Rec., 286–287, 292–293, 308–309, 318–319, 324, 329, 334-335, 339-340, 345.)

Contention that because the reduction in rates would be so small on a single article weighing only a few pounds, therefore there would result no material reduction in price or benefit to the consumer.

Counsel for the carriers contends that because the reduction of the rates to Lagrange so as to make them not higher than the rates to Atlanta would amount to an insignificant sum on a single article weighing only a few pounds, like a pair of shoes, therefore there could result no material benefit to *consumers* at Piedmont from such reduction.

It would seem to be unnecessary and a waste of time to call attention to the fallacy of such a contention.

It is clear that a reduction in the Lagrange rates so as to make them not higher than the Atlanta rates will amount to a considerable sum to *Lagrange merchants* who sell goods to a large number of consumers, and that whatever increases the prosperity of the merchants and business men of a locality, will indirectly, if not directly, benefit and build up the entire community.

The prosperity of a community or town is necessarily dependent upon that of its merchants and business men, who give employment to its laborers, and who build its stores, business houses, and manufactories.

CHAPTER XL.

Carriers in all cases attempt to deter the courts from enforcing orders of the Commission on the ground that such enforcement will result in a ruinous loss of revenue.

Their prophecies of loss or disaster unfulfilled.

As said by Mr. Walker in the extract from his opinion quoted in the preceding chapter, the carriers in all these cases where an order of the Commission requiring a compliance with the law is sought to be enforced, object that it will result in a ruinous loss of revenue.

This objection was urged in the Social Circle case. The order in that case forbade higher rates to Social Circle than for the haul through Social Circle to Augusta. It was said that if the order was enforced it would call for a reduction in rates along the entire line of railway of the defendant and result in an unreasonable loss of revenue. *This court decreed the enforcement of the order, but the direful consequences predicted have not, so far as we have heard, been realized.*

So when this court rendered the decision in the Joint Traffic Association case, declaring the agreement of that association unlawful because it stifled competition and was, therefore, in restraint of trade and commerce, there was great apparent consternation among railway magnates. They held meetings at New York and other commercial centers and were unanimous in declaring that the decision would result in immense loss to the carriers, if it did not, in fact, entirely bankrupt them.

The roads have been more prosperous since than before that decision.

At least three-fourths of the States have enacted laws creating railroad commissions with power to regulate transportation of domestic traffic within the States and giving those commissions in many cases greater power than that possessed by the Interstate Commerce Commission, namely *the power to prescribe rates.*

The court may take judicial notice of the fact that the carriers have invariably opposed this legislation on the ground that it would work great injury not only to the carriers, but to the States themselves by preventing the further investment of capital in railways.

The census shows that more capital has been invested in railways, more miles of railway have been built, and the roads themselves have been more prosperous since the enactment of those laws than ever before.

Any interference with the carriers by Congress or State legislatures, in the way of regulation, no matter how necessary, is resented and persistently resisted, *and the attempt is invariably made to deter the courts from the enforcement of such regulation by the prophecy of irreparable loss.*

All these prophecies remain unfulfilled.

CHAPTER XLI.

Discrimination to the extent practiced may be unlawful, although some discrimination may be justified.

Whether discrimination to the extent practiced is justifiable, a question to be determined by the courts or the Commission.

It is manifest that although a substantial dissimilarity of condition resulting from competition may exist the extent of the discrimination may be in excess of what is warranted by such dissimilarity of condition.

In the "Chattanooga case" (85 Fed. Rep., p. 118) Judge Severens says on this point:

> When a violation of the long and short haul provision is charged, competition is one of the elements which enter into the determination of the question whether the conditions are similar, and if dissimilarity is found, *then the further question arises whether the dissimilarity is so great as to justify the discrimination which is complained of.* * * *

When the matter is up for investigation by the Commission or the courts, the question whether discrimination to the extent practiced by the carriers is justifiable is to be determined by those tribunals.

This court in the "Alabama Midland case" (168 U. S., p. 173) states "*that it would not approve the position that the determination of the extent to which discrimination is justified by circumstances and conditions should be left to the carrier.*"

In the concluding clause of the proviso to the fourth section of the law the authority is expressly conferred upon the Commission to prescribe the *extent* of the discrimination which may be justified under that section, as follows:

> "The Commission may from time to time prescribe the *extent* to which designated common carriers may be relieved from the operation of this" (fourth) "section of the act."

This is an express recognition in the law itself of authority in the Commission to consider and prescribe the extent to which discrimination may be practiced under the fourth section, even where the circumstances and conditions are substantially dissimilar. If the circumstances and conditions are not substantially dissimilar, no discrimination at all can be practiced.

The amount or extent of the discrimination is, therefore, a matter to be considered and scrutinized by the court in this and all similar cases. If carriers are to determine the extent of the discrimination a dissimilarity of condition in a given case may justify, then, whenever such dissimilarity is shown, the case is taken from under the law, and neither courts nor Commission have the power to interfere, and carriers are left at liberty to practice discrimination to any extent they please over and above the amount justified by the dissimilarity of condition.

In this connection the following extract from the opinion of Judge Severens in the "Chattanooga case" is apropos:

> "The argument of counsel for the carriers is in effect that the *extent* of the discrimination must be confided to the judgment of the railroad officials, whose ability and experience best qualify them for the task. If this be so, there is nothing for the Commission or the court to do but to take notice of the fact that the conditions are dissimilar, and abandon all further inquiry. It is fundamental that no such proposition as this can be admitted." (85 Fed. Rep., 117.)

CHAPTER XLII.

Distinctions between sections 3 and 4 of the law—the former ex vi termini requires consideration of the extent of the prejudice resulting from the discrimination.

Section 3 may apply where section 4 does not.

The attention of the court is asked to a material distinction between the language of section 3 and the language of section 4 of the law.

Section 4 forbids the greater charge for the shorter haul "*under substantially similar circumstances and conditions.*"

Section 3 forbids "*any undue or unreasonable prejudice or disadvantage in any respect whatsoever.*"

The test under section 4 is, so to speak, the "conditions" at the two localities—that is, whether they are substantially similar or dissimilar; and the test under section 3 is the *extent* of the "prejudice or disadvantage" resulting from the discrimination practiced—that is, whether or not that prejudice or disadvantage be undue or unjust in its extent to the locality discriminated against.

Under section 4 stress is laid upon the amount and force of the competition; under section 3 it is the amount or extent of the *prejudice or disadvantage.*

The language of section 3, "*undue or unreasonable* prejudice or disadvantage," relates to the *effect* of the discrimination, and necessarily calls for a measurement or consideration of the *extent* of the injury or prejudice resulting from it. The language *ex vi termini* imports or requires measurement.

In determining, therefore, whether discrimination is justified to the extent shown in this case, it is proper to consider

the effect of the discrimination on Lagrange, the locality discriminated against.

A distinct field of operation to be given to each of the sections; section 3 may apply where section 4 does not.

It is, of course, the duty of the courts to give, if possible, a distinct field of operation to each of these two sections. Counsel for the carriers concedes, or has conceded in other cases, that section 3 of the law may apply where section 4 does not. On page 45 of the printed argument filed by him in the United States circuit court of appeals for the fifth circuit, in the cases known as the "Georgia Railroad Commission cases," he says:

> "If, however, the circumstances and conditions are substantially dissimlar, while the fourth section can have no operation, *the third section remains operative*, and under that section the court can decide whether the disparity in rates constitutes an undue preference in favor of the longer distance point or an undue prejudice against the shorter distance point." (Italics mine.)

If the circumstances and conditions are shown to be substantially dissimilar under section 4 because of competition and some greater charge for a shorter than a longer haul is thereby authorized, there remains the question whether the excess of the rate to the shorter distance point over that to the longer distance point is not too great—in other words, is not undue, AND THERE IS THUS LEFT A FIELD OF OPERATION FOR SECTION 3.

It is manifest that the fact that some excess in the rates to the shorter distance point over those to the longer distance point is allowable, DOES NOT JUSTIFY ANY EXCESS THE CARRIER MAY SEE FIT TO EXACT.

Although some excess may be allowable under section 4, the actual excess charged may be undue under section 3.

CHAPTER XLIII.

Testimony of Lagrange merchants showing injury to Lagrange.

Testimony of Lagrange merchants examined as witnesses in this case shows that Atlanta merchants can compete on the streets of Lagrange on equal terms with Lagrange merchants, and that Opelika merchants can *undersell* Lagrange merchants on the streets of Lagrange; that Atlanta merchants have a monopoly of the business in all the territory between Atlanta and Lagrange, and that Opelika merchants have a monopoly of all the business in the territory between Opelika and Lagrange; that Lagrange merchants can do no business *on the line of railway at all* and are limited to a *small wagon business* out into the surrounding country.

The following is an extract from the testimony of Mr. Fuller E. Callaway, a Lagrange merchant, in answer to direct interrogatories 11 and 26:

> "Answer to interrogatory 11. The disadvantage results from the fact that an Opelika merchant can ship first-class goods from New Orleans to Opelika for $1.03 per 100 pounds and then reship that freight from Opelika to Lagrange for 32 cents per 100 pounds. This makes Opelika's combination rate from New Orleans to Lagrange $1.35 per hundredweight, while Lagrange merchants have to pay $1.43 per 100 pounds on a through shipment of first-class freight from New Orleans, through Opelika, to Lagrange. This discrimination allows an Opelika merchant to undersell the Lagrange merchant 8 cents per 100 pounds on first-class goods at the Lagrange merchant's front door. This difference applies proportionately on all classes of freight.

Also, an Atlanta merchant can ship first-class freight from New Orleans through Lagrange to Atlanta for $1.03 per 100 pounds and reship the same back to Lagrange at 40 cents per 100 pounds. This makes Atlanta's combination rate to Lagrange $1.43 per 100 pounds. In other words, this enables an Atlanta merchant to ship from New Orleans to Atlanta through Lagrange and then reship back to Lagrange at $1.43 per 100 pounds, while the through rate now charged and collected on freight shipped from New Orleans to Lagrange is $1.43 per 100 pounds. This enables the Atlanta merchant to sell goods in Lagrange at the same price as a Lagrange merchant can. Further, *an Atlanta merchant can ship first-class freight from New Orleans, through Lagrange, 495 miles to Atlanta, at $1.03 per 100 pounds, and can reship the same 59 miles back to Hogansville, toward and within 12 miles of Lagrange, at 36 cents per 100 pounds, which makes Atlanta's combination rate to Hogansville on New Orleans products $1.39 per 100 pounds. Lagrange merchants to handle Hogansville's trade have to pay $1.43 per 100 pounds from New Orleans to Lagrange and 20 cents from Lagrange to Hogansville, making Lagrange's combination rate to Hogansville $1.63 per 100 pounds. This enables Atlanta merchants to reship to Hogansville, 59 miles, and within 12 miles of Lagrange, at 24 cents per 100 pounds less than Lagrange merchants can ship to Hogansville.*

"This difference works in the same proportion on all classes of freight, the advantageous difference in favor of Atlanta getting larger and larger between each station between Hogansville and Atlanta. The result of the above discrimination builds up Atlanta and Opelika merchants at the expense of Lagrange merchants, and makes it impossile for Lagrange to be a mercantile center or jobbing point until these discriminations cease, as every local station on the Atlanta and West Point Railroad gets lower rates from New Orleans, New York, and Eastern supply markets and Ohio River supply markets, on all classes of freight, than Lagrange, although the mileage is greater at all stations between Lagrange and

Atlanta from New Orleans, and between Lagrange and Montgomery from New York." (Rec., 283.)

"Answer to interrogatory 26. Lagrange, Ga., was a town and trade center for adjacent surrounding territory *twenty years before any railroad was built to Lagrange; she had 35 to 60 miles of territory in every direction* before the railroads were built, but since then, on account of the discrimination in rates against Lagrange and in favor of other towns along the railroad, her territory has been reduced to where she *has now only from 5 to 15* miles of territory. Lagrange was incorporated by the State Legislature in 1829." (Rec. 287.)

(To the same effect is the testimony of eleven other Lagrange merchants and old citizens.)

CHAPTER XLIV.

The case within the evil the act to regulate commerce was designed to remedy.

The law to be so construed as to give it operation.

Lagrange, a natural trade center, retarded in growth by discrimination in favor of competitors in all directions.

The testimony of Lagrange merchants set forth in the preceding chapter, showing the extent of the injury to Lagrange under the discriminations complained of, presents the case of a NATURAL TRADE CENTER, in existence long before the present railroad system was established, deprived of the territory naturally tributary to it and hampered and retarded in its commercial growth by the so-called system of rate-making discriminating against it in favor of its competitors *in all directions.*

Under this system, artificial trade centers, Atlanta and Opelika, fostered by the railroads, have grown and flourished at the expense of Lagrange.

The situation of Lagrange is just such a situation as the act to regulate commerce was designed to remedy, and this case falls clearly within the evil which that act was enacted to suppress.

In the language of this court in *Union Pacific Company* v. *Goodrich* (149 U. S., 680), the law was designed to "*cut up by the roots the entire system of rebates and discriminations in favor of particular localities*, special enterprises, and favored corporations."

Statutes must be given operation.

"It is a cardinal rule that all statutes are to be so construed as to give them operation, *ut res magis valeat quam pereat.* Hence, in the construction of statutes, if it can be avoided, an interpretation is never to be adopted that would defeat the purpose of the enactment." "This," says Justice Story, "*is a rule of mere common sense.*"

(Endlich on the Interpretation of Statutes, pp. 351, 352; Potter's Dwarris on Statutes of Constitutions, p. 189.)

Statute remedial.

There is no reason why the above cardinal rule of construction should not be applied to the act to regulate commerce, but, on the contrary, there is every reason why it should be so applied. The act provides remedies in addition to those at common law and is a *remedial statute*, and under the well recognized rule it should as a remedial statute be liberally construed so as to promote the remedies it provides and suppress the mischiefs it was designed to suppress.

Counsel for the defendants will doubtless contend that under the decisions of this court the mere fact of discrimination or preference is not sufficient, and that even where, as in the present case, the discrimination or preference is shown to have resulted in the evils which the law was enacted to remedy, that is not conclusive. Yet, conceding that this court so holds, we contend that the latter fact is a matter or circumstance to be considered in determining whether the preference and prejudice are undue under section 3, and that in such a case the justification or defense set up by the carriers should be closely scrutinized and *the law be given the benefit of every reasonable doubt.*

CHAPTER XLV.

The public interests.

The right to discriminate on the ground of competition to be exercised with due regard to the interest of the locality to which the goods are shipped—in this case, Lagrange.

This court holds that in any event the right to discriminate on the ground of competition is to be exercised or enjoyed "with a due regard to the interests of the public."

L. and N. R. R. Co. *v.* Behlmer, 175 U. S., 674.

I. C. C. *v.* Ala. Mid. Ry. Co. et al., 168 U. S., 167.

E. T., Va. and Ga. Ry. Co. *v.* I. C. C., 181 U. S., 19.

Texas and Pac. Ry. *v.* I. C. C., 162 U. S., 220.

The public, as distinguished from the carriers, consists of the shippers at the shipping point and the consignees or community at the locality to which the traffic is to be delivered.

It can not be claimed that the discriminations against Lagrange subserve the interests of the public or the shippers at New Orleans, the point of shipment.

We have shown the injurious effects upon the public interests at Lagrange, the locality to which the goods are shipped, of the discriminations practiced in this case, and it is manifest that those discriminations are made regardless of the injury to those interests.

This court has taken pains in all its decisions upon this subject to safeguard the interests of the locality to which the goods are shipped.

In *Texas and Pacific Ry.* v. *I. C. C.* (162 U. S., 220), this court says:

> "The welfare of the *locality to which the goods are sent* is also, under the terms and spirit of the act, to enter into the question."

In *L. and N. R. R. Co.* v. *Behlmer* (175 U. S., 674), this court holds that—

> The right to discriminate on the ground of competition "is in every event to be only enjoyed with a due regard to the interests of the public, after giving full weight to the benefits to be conferred on the place from whence the traffic moved *as well as those to be derived by the locality to which it is to be delivered.*"

It can not be claimed that the interest of the carrier and of the favored localities benefited by the discrimination shall alone be considered, without any regard whatever for the interests of that portion of the public represented by the localities injured by the discrimination.

The favored localities able to take care of themselves; the law made for the weaker.

The favored localities are, as a general rule, larger and more powerful in every respect than the localities discriminated against, the result, in part at least, of the discrimination in their favor. *The law was made to do justice to all, but especially to protect the weak from the encroachment of the strong. The powerful can protect themselves.*

Limit on carriers' right to promote their own interest.

Discrimination is claimed to be justified only on the ground that it is necessary to enable the carrier making the discrimination to meet competition and thus retain competitive traffic. In determining the extent to which a carrier may go in *thus protecting its own interest*, we should apply the maxim of the

law, "*so use your own that you do not injure the interest of another.*"

Under this rule discrimination is only justified to the extent that it may be practiced without inflicting material injury on any *legitimate* interests of the public or any portion of the public.

When this court speaks of "the interests of the public," it refers, of course, to the *legitimate* interests of the entire public affected, *and not to interests of particular localities created and fostered by favoritism in rates at the expense of the public interests of other localities.*

In case of conflict, the interest of the public to be preferred.

Inasmuch as the carrier derives its franchise, its "right to exist," from the public, the interest of the public should be held to be paramount, and if in cases of conflict the interest of either is to be preferred it should be that of the public.

CHAPTER XLVI.

Distinctions between the present case and other cases.

The present case stronger than the Social Circle case.

As we have seen, this court holds in the Alabama Midland case (168 U. S., p. 160), that whether competition justifies exemption from the law in a given case is a *question of fact depending on the matter proved in that case.*

The facts in the case at bar distinguish it from the Alabama Midland case and from all other cases heretofore decided by the courts adversely to the Commission, in the following respects:

1. In other cases it has not been denied that the shorter distance points had the benefit of *the lowest combination.*

The case at bar is the first case in which issue has been joined on this point and evidence introduced showing that the shorter distance point discriminated against has not the benefit of the lowest combination. (See Chapter XIX.)

2. *In no other case has such strong proof been adduced of the excessiveness of the rates to the shorter distance points.*

In Chapter V of this argument we give a summary of the grounds upon which we claim that the Lagrange rates are excessive. *These grounds are eight in number.*

3. The case at bar is a case of discrimination against a point entitled to treatment as a competitive point, being on two lines of road, *in favor of strictly local stations*—Hogansville, Palmetto, and Fairburn. This feature of the case distinguishes it from all others.

In the above and many other material particulars the case at bar is distinguishable from other cases heretofore presented to the courts.

The present case stronger than the Social Circle case.

In the case known as the "Social Circle case" (C., N. O. & T. P. Ry. Co. *v.* I. C. C., 162 U. S., 184), in which the circuit court of appeals and the Supreme Court sustained the order of the Commission prohibiting higher rates to Social Circle than to Augusta, *Social Circle was a small (100 or 200 inhabitants), strictly local station on one line of road alone,* while Augusta was a large competitive point, served not only by several competing lines of railway, but also by the Savannah River. Social Circle, moreover, was given the *lowest combination* of through and local rates.

The present case is, therefore, a much stronger case in behalf of the Commission than the Social Circle case.

CHAPTER XLVII.

Burden of proof.

UNDER SECTION 4:

Where rates to shorter distance points are higher than to longer distance points the burden of proof is upon the carriers to show "a substantial dissimilarity of circumstances and conditions" justifying such higher rates. *This is admitted by counsel for carriers.*

UNDER SECTION 3:

The same is true where rates to different localities are shown under section 3 to be *relatively* unequal. The burden is upon the carrier to justify the *relative inequality.*

UNDER SECTION 1:

Counsel for carriers insists that when rates are charged to be excessive in themselves and hence in violation of section 1, the burden of proof is upon the party making the charge.

Conceding that to be so where the charge is under section 1 alone, and there are no charges under sections 3 and 4, *we claim that the burden of proof has been shifted in this case.*

The facts in evidence and relied upon by the Commission raise at least a *strong presumption* of the excessiveness of the rates to Lagrange. (See Chapter V, *supra.*)

This presumption is sufficient to shift the burden of proof *as to the reasonableness of the rates* to the defendants.

Counsel for the carriers *has practically admitted* this burden by attempting to prove by all his witnesses, on direct examination, that the rates to Lagrange are reasonable.

The Commission laid down the correct rule as to burden of proof in the case of McMorran *v.* Grand Trunk Railway of Canada (3 I. C. C. R., p. 261), as follows:

> When a rate is *prima facie* disproportionate or relatively unequal, the *onus* is on the carrier to justify its charges when challenged on these grounds. *The knowledge of the justifying circumstances and conditions relied on is peculiarly in the possession of the carrier.*

In that case the Commission further says in this connection:

> "The evidence does not show with any precision what these several expenses" (terminal expenses) "are, either in the aggregate or what would be a fair distribution of them per carload or per hundred pounds of freight. The defendants assume in their brief that the *burden* of showing these expenses was upon the petitioner; but this assumption is altogether erroneous. It would impose on persons conceiving themselves aggrieved by carriers *a difficult and onerous rule of evidence.* It would be impossible for the petitioners to show such facts otherwise than by the *defendants' agents*, and it was clearly the province of the defendants to make them appear."

The rule that the burden is on a party to prove what is peculiarly in his knowledge, whether the proposition be affirmative or negative, is elementary law, and is laid down by all text writers on the subject.

Section 367, 3d ed., Wharton on "Law of Evidence."

Section 79, 15th ed., "Greenleaf on Evidence."

CHAPTER XLVIII.

Error of circuit court of appeals in refusing to decide the case upon the merits and in practically remanding it to the Commission for reinvestigation.

The decree of the circuit court of appeals remands this case to the circuit court "*with instructions to set aside its decree adjudging that the order of the Commission be enforced and dismiss the application made for that purpose, with costs, the whole to be without prejudice to the right of the Commission to proceed upon the evidence already introduced before it, or upon such further pleadings and evidence as it may allow to be made or introduced, to hear and determine the controversy according to law.*"

(Rec., 429.)

As precedent or authority for this order the circuit court of appeals cites the "opinions of this court" in *Interstate Commerce Commission* v. *The Clyde S. S. Co. et al.* (181 U. S., 29) and *The East Tenn., Va. and Ga. Ry. Co. et al.* v. *The I. C. C.* (Ib., 1).

In these two cases cited in the order or decree of the circuit court of appeals, and also in *Louisville and Nashville R. R. Co.* v. *Behlmer* (175 U. S., 648), this court made the same order as that above stated, *but the ground upon which this court made the order in the cases named does not exist in the present case.*

THE PRESENT CASE DOES NOT BELONG TO THAT CATEGORY OF CASES.

The Commission did not in this case, as in the cases cited by the circuit court of appeals and in the Behlmer case "unduly restrict its inquiries into the facts because of any mistaken view of the law," but considered fully competition of all kinds and all the matters of defense set up by the defendants and all the testimony offered in relation thereto.

FOR A FULL DISCUSSION OF THIS MATTER, SEE PETITION FOR REHEARING, RECORD, pp. 423–426.

The circuit court of appeals having failed to consider the case upon its merits, this court may either do so itself or remand the case to the circuit court with directions to that court to set aside its decree and proceed to determine the case according to law.

O

SUPPLEMENTAL BRIEF FOR COMPLAINANT.

CHAPTER I.

1.

The decree of the court below a final decree.

The decree of the circuit court of appeals remands the case to the circuit court "with instructions TO SET ASIDE ITS DECREE ADJUDGING THAT THE ORDER OF THE COMMISSION BE ENFORCED, AND DISMISS THE APPLICATION MADE FOR THAT PURPOSE WITH COSTS, the whole to be without prejudice to the right of the Commission to proceed upon the evidence already introduced before it, or upon *such further pleadings and evidence* as it may allow to be made or introduced, to hear and determine the controversy according to law."

2.

This decree is final because, *first*, it leaves the court below "no power to enter any other" decree "or to consider or to determine other matters not included in the duty of entering the" decree "as directed." (*Wabash R. R. Co.* v. *Tourville*, 179 U. S., p. 326.)

3.

This decree finally determines the present suit.

The decree is final because it finally determines the *present case in court*. The fact that it recognizes a right in the complainant to institute another proceeding in reference to the same subject-matter does not deprive it of the character of finality as to the pending suit.

"*A final judgment means not a final determination of the rights of the parties with reference to the subject-matter of the*

litigation, but merely of their rights WITH REFERENCE TO THE PARTICULAR SUIT. In other words, it is not at all necessary that the judgment should be upon the *merits*, if it definitely puts the case out of court. A judgment of nonsuit is final though it does not reach the merits. IT IS THE TERMINATION OF THE INDIVIDUAL ACTION WHICH MARKS THE FINALITY OF THE JUDGMENT."

(Black on Judgments, sec. ed. Vol. I, sec. 21, p. 32.)

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4.

This decree finally disposes of the *case in court*, by directing that "the decree of the circuit court in favor of the Commission be set aside and that the Commission's bill of complaint or application for the enforcement of its order be *dismissed with costs.*" *If the bill is dismissed, that is an end of the pending case in court.*

5.

Case in court can not be reopened.

The fact that the dismissal is without prejudice to the right of the Commission to reinvestigate, *if it see proper*, does not affect the finality of the decree so far as *the present case in court* is concerned. *It does not authorize a reopening of the pending case in court; that case is finally dismissed and disposed of.*

6.

The reinvestigation suggested in the decree is a *new* investigation on "*further pleadings and evidence.*"

Even if the Commission should institute a reinvestigation of the matter before itself, and should make an order against the defendants on such reinvestigation, *a new suit would have to be instituted in the circuit court for the enforcement of that order.*

7.

The Commission, however, would be simply stultifying itself in reinvestigating the case in view of the fact that, as

shown in the petition for a rehearing to the circuit court of appeals, the Commission has already fully investigated the case. *A copy of that petition is hereto attached as Exhibit A.* (See Rec., pp. 423–426.)

8.

The fact that a decree is no bar to another suit does not render it the less final in the pending suit.

A decree dismissing a bill for matters *not involving the merits* is no bar to a subsequent suit, but to constitute a final decree for the purpose of appeal it is not essential that it should be a bar to another suit.

Hughes v. *U. S.*, 4 Wall., 232.

Colorado Eastern Rwy. Co. v. *Union Pacific Rwy. Co.*, 94 Fed. Rep., 312.

9.

The decree does not authorize further proceedings by a lower court or any officer thereof.

In all the cases in which decrees have been held to be not final because of further proceedings to be had, the further proceedings are directed to be taken *either by the court below or some officer thereof*, such as a master in chancery. The Interstate Commerce Commission, complainant in this case, is not an agency of the court.

10.

THE REINVESTIGATION IS MERELY SUGGESTED in the decree. It is not made compulsory. This also distinguishes this case from the other cases which have been before the courts.

CHAPTER II.

1.

Decree of circuit court of appeals erroneous.

That the decree of the circuit court of appeals is erroneous is demonstrated in the petition for rehearing, Exhibit A hereto. (See also Chapter XLVIII, pp. 143, 144, original printed argument filed in this court.)

2.

If it is held to be incumbent upon the Commission under the decree of the lower court to reinvestigate a matter which it has already fully and to the best of its ability investigated, *then the Commission is practically denied all right of appeal, and the case can never reach this court.*

3.

The fact, if it be a fact, that the Commission has, in the opinion of the circuit court of appeals, erred in its conclusions either of law or of fact, is no ground for that court's making a reinvestigation incumbent upon the Commission. The finding of the circuit court of appeals on those points adverse to the finding of the Commission is a proper subject of review by this court, and the circuit court of appeals *can not deprive the Commission of the right of appeal to this court by such a palpably erroneous order as that made in this case.*

4.

The Commission promptly petitioned the circuit court of appeals for a rehearing, demonstrating in that petition the error of the court in the decree rendered by it. The rehearing was denied. WHAT REMEDY HAD THE COMMISSION, IF NOT BY APPEAL TO THIS COURT?

CHAPTER III.

1.

The hauls from New Orleans to Lagrange strictly through hauls.

Counsel for the carriers in his oral argument asserted that after traffic from New Orleans reached Montgomery it was hauled on to Lagrange as local traffic. This, if true in any sense, is no more true in respect to shipments to Lagrange than in respect to shipments to Atlanta. The undisputed testimony is that all traffic to Lagrange whether in carloads or less than carloads is shipped under a through bill of lading naming the aggregate through rate.

(Record, bot. p. 284, top p. 285; 291; 312.)

2.

No extra expense on Lagrange traffic whether in carloads or less than carloads.

Carloads.

When goods are hauled in *carloads* from New Orleans to Lagrange they are hauled in the cars in which they are originally shipped all the way to Lagrange just as in the case of Atlanta. The only transfer both on shipments to Atlanta and shipments to Lagrange in carloads is at Montgomery, and there is no extra expense on such shipments to Lagrange over that on such shipments to Atlanta.

(Record, 365; original printed argument, p. 74.)

3.

Less than carloads.

The same is the case as to less than carload shipments both to Lagrange and to Atlanta.

(Record, bot. p. 363, top p. 364; original printed argument, pp. 74, 75.)

Respectfully submitted.

L. A. SHAVER,
Solicitor.

EXHIBIT A.

United States circuit court of appeals for the fifth circuit.
November term, 1900.

THE LOUISVILLE AND NASHVILLE RAILROAD Company, The Western Railway of Alabama, and The Atlanta and West Point Railroad Company, appellants, *v.* THE INTERSTATE COMMERCE COMMISSION, appellee.	No. 910.

PETITION FOR REHEARING.

The Interstate Commerce Commission, appellee in the above-named cause, respectfully petitions the court for the vacation of the order or decree therein made May 14, 1901, and for a rehearing thereof on the following grounds:

1. Said order or decree of the court remands said cause to the circuit court, "with instructions to set aside its decree adjudging that the order of the Commission be enforced, and dismiss the application made for that purpose, with costs, the whole to be without prejudice to the right of the Commission to proceed upon the evidence already introduced before it, or upon such further pleadings and evidence as it may allow to be made or introduced, to hear and determine the controversy according to law," and as precedent or authority for this order cites the "opinions of the Supreme Court of the United States in *Interstate Commerce Commission* v. *The Clyde*

Steamship Company et als. and *The East Tennessee, Virginia and Georgia Railway Company et als.* v. *The Interstate Commerce Commission*, recently decided, not yet reported." (181 U. S., pp. 1, 29.)

2. In the two cases cited in the order or decree of this court, and also in *Louisville and Nashville Railroad Company* v. *Behlmer* (175 U. S., 648), the Supreme Court made the same order as is made by this court in the present case, *but the ground upon which the Supreme Court made the order in the cases named does not exist in the present case.*

3. In the said cases cited by this court and in the Behlmer case (*supra*) the Commission refused to consider competition *by carriers subject to the act to regulate commerce*, as constituting the substantial dissimilarity of circumstances and conditions which would take a case from under the rule of section 4 of the act, on the ground that such competition could not be considered by them except on application by the carriers under the proviso to the fourth section of the act for relief from the rule of that section.

The ruling of the Commission on this point, in the opinion of the Commission in *Georgia Railroad Commission* v. *Clyde Steamship Company et al.*, one of the cases cited by this court in the order in this case, and quoted by the Supreme Court in *East Tennessee, Virginia and Georgia Railway Company* v. *Interstate Commerce Commission*, the other case cited by this court in its order in this case, was thus stated by the Commission:

"The carrier has the right to judge in the first instance whether it is justified in making the greater charge for the shorter distance under the fourth section, in all cases where the circumstances and conditions arise wholly upon its own line or through competition for the same traffic with carriers *not subject to regulation under the act to regulate commerce.* In other cases under the fourth section" (that is, cases of competition by carriers subject to the act) "the circumstances and conditions are not *presumptively* dissimilar and the car-

riers must not charge less for the longer distance *except under the order of the Commission.*" (That is, order of Commission on application to the Commission for relief under the proviso to the fourth section.) (Italics mine.)

The Supreme Court in *Interstate Commerce Commission* v. *Alabama Midland Railway Company* (168 U. S., 144, 164) held that this construction of the law by the Commission was erroneous, and this ruling was affirmed by the Supreme Court in the two cases cited by this court in its order in this case and in the Behlmer case (*supra*).

The Supreme Court further held in the three last-named cases that because of this erroneous construction of the law the Commission had unduly restricted its inquiries into the facts, and that, inasmuch as "the defendant was entitled to have its defense considered, in the first instance at least, by the Commission, *upon a full consideration of all the circumstances and conditions upon which a legitimate order could be founded*," the cases should be remanded to the circuit court with instructions to that court to set aside its decree and to dismiss the application of the Commission for the enforcement of its order, "*the whole to be* without prejudice to the right of the Commission to proceed upon the evidence already introduced before it or upon such further pleadings and evidence as it may allow to be made or introduced, to hear and determine the matter in controversy according to law."

This order was based solely upon the ground that the Commission had unduly restricted its inquiries into the facts because of its mistaken view of the law, and that thereby injury had been done the defendant who was, in the language of the court, "*entitled to have its defense considered, in the first instance at least, by the Commission upon a full consideration of all the circumstances and conditions upon which a legitimate order could be founded.*"

4. The present case was decided by the Commission, December 31, 1897, nearly two months after the decision of the

Supreme Court in *Interstate Commerce Commission* v. *Alabama Midland Railway Company* (*supra*), holding that the Commission had erred as above stated, and the Commission, being advised of the latter decision, did not in the present case repeat its said error.

An examination of the opinion of the Commission in this case shows that it did not unduly restrict its inquiries as to any matter presented for its consideration, either by the pleadings or testimony, and that in particular it fully considered competition of every character set up. This will appear from the following extracts from its opinion:

"It remains to be determined under this branch of the case whether competition at Atlanta causes transportation of freight by the defendants from New Orleans to Hogansville, Newnan, Palmetto, or Fairburn to be conducted under circumstances and conditions which are substantially dissimilar from those which affect the transportation of like traffic from New Orleans to Lagrange. *This includes both the competition of markets for supplying goods to Atlanta and the competition of carriers for the carriage of freights to that point* from New Orleans and from Western, Northern, and Northeastern cities." (Italics mine.) (Opinion of the Commission, p. 6.)

The Commission announced its conclusion as to competition in the following language:

"*Having fully considered all the evidence and material facts and given due weight to the competition of carriers and of markets for Atlanta trade*, together with the fair interests of the defendant carriers, the interests of the communities involved, and those of the complainants and other dealers (the Import Rate case—*Texas and P. R. Co.* v. *I. C. C.*, 162 U. S., 197; *I. C. C.* v. *Alabama Midland Railway Co.*, 168 U. S., 144), we find and hold that transportation of freights by defendants from New Orleans to Lagrange and the transportation of like freight from New Orleans to Fairburn are under substantially similar circumstances and conditions; and that the same is true as to such transportation by defendants to Lagrange and Hogansville, Lagrange and Newnan, and Lagrange and Palmetto." (Italics mine.) (Opinion of the Commission, p. 8.)

5. This case does not belong to the class of cases in which the Supreme Court made orders such as that made by this court in the present case. The Commission has already in this case "heard and determined the matter in controversy *according to law*" in the sense of those words as used by the Supreme Court.

Respectfully submitted.

L. A. SHAVER,
Solicitor for the Appellee.

I, L. A. Shaver, counsel for the Interstate Commerce Commission, appellee in the above-stated cause, hereby certify that the foregoing petition for a rehearing is not interposed for delay, and that the same is, in my judgment, well founded. This the 23d day of May, 1901.

L. A. SHAVER,
Solicitor for the Appellee.

O

OFFICE SUPREME COURT U.S.
RECEIVED
MAY 28 1903

IN THE

Supreme Court of the United States.

OCTOBER TERM, 1902.

The Interstate Commerce Commission,

Appellant,

v.

The Louisville and Nashville Railroad Company, The Western Railway of Alabama, and The Atlanta and West Point Railroad Company.

No. 214.

APPEAL FROM THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE FIFTH CIRCUIT.

PETITION FOR REHEARING.

PETITION FOR REHEARING.

The Interstate Commerce Commission, appellant in the bove-named case, respectfully petitions the court for a vaca-ion of the decree therein made May 18, 1903, and for a ehearing thereof on the following grounds:

1. This court bases its decision in this case solely upon the estimony and issues in the case before the Commission and he rulings of the Commission in that case, and makes no eference whatever to the testimony taken and the pleadings led in the present case in court.

2. **The case in court an original and independ-nt proceeding based on new pleadings and new r additional testimony.**

Section 16 of the "act to regulate commerce," under hich this case was instituted, requires the courts "to hear nd determine these cases speedily as courts of equity, and ithout the formal pleadings and proceedings applicable to rdinary suits in equity, but in such manner as to *do justice* n the premises," and that the courts "*shall have power, if hey think fit, to direct and prosecute, in such mode and by uch persons as it may appoint, all such inquiries as the court ay think needful to enable it to form a just judgment in he matter.*"

Under this last provision, which is italicized, a large amount f new testimony was taken by order of the court in behalf f both the complainant and the carriers, and new pleadings, bill of complaint and answers thereto, were filed in court.

It is settled that in a proceeding before the courts to enforce orders of the Commission, the matter is heard *de novo* and the proceeding is "an original and independent proceeding" based on new pleadings and new evidence and that it is the duty of the courts to "do justice as courts of equity *upon the entire body of the evidence.*"

Social Circle case (56 Fed. Rep., 934, 935).
I. C. C. v. *C. N. O. & T. P. Ry. Co. et al* (64 Fed. Rep., 984, 985).
Shinkle, Wilson & Kries Co. et al. v. *L. & N. R. R. Co.* (62 Fed. Rep., 693).
I. C. C. v. *Ala. Mid. Ry. Co.* (168 U. S., 175).

In the *Alabama Midland case* (168 U. S., 175) this court says:

"It has been uniformly held by the several circuit courts and the circuit courts of appeal in such cases that they are *not restricted to the evidence adduced before the Commission* nor to a consideration merely of the power of the Commission to make the particular order in question, but that additional evidence may be put in by either party, and that *the duty of the court is to decide as a court of equity upon the entire body of the evidence.*"

3. **Testimony in case in court.**

This court states in its opinion in this case that "the evidence introduced at the hearing *before the Commission* in support of the complaint consisted solely of the testimony of the complainant," and that "much evidence—both oral and documentary—was introduced in behalf of the railroads."

In the case in court there were introduced in behalf of complainant the depositions, with exhibits attached, of the following witnesses:

Jesse M. Smith, Record, pp. 251–268.
Fuller E. Calloway, Record, pp. 281–287.

E. R. Bradfield, Record, pp. 289–293.
D. A. Dansby, Record, pp. 295–298.
T. S. Bradfield, Record, pp. 300–303.
H. H. Childs, Record, pp. 305–309.
T. J. Harwell, Record, pp. 310–314.
J. E. Dunson, Record, pp. 315–319.
J. H. Edmondson, Record, pp. 321–324.
W. V. Gray, Record, pp. 326–330.
B. H. Seay, Record, pp. 331–335.
M. L. Fleming, Record, pp. 337–340.
H. D. Glanton, Record, pp. 341–346.

There was also introduced in the case in court in behalf of the complainant a number of stipulations setting forth tariffs of rates for the purpose of showing by comparison the excessiveness of the Lagrange rates.

Record, pp. 244–247.

4. **Testimony in court bearing upon reasonableness of Lagrange rates.**

This court in its opinion holds that "there was nothing in the evidence *taken before the Commission* to lend support to the finding that the rates to Lagrange were intrinsically unreasonable."

The Commission mentions in its report a number of facts which, *in its opinion*, tended to show the unreasonableness of the Lagrange rates.

There was evidence INTRODUCED IN COURT in behalf of the complainant tending to show the unreasonableness of the Lagrange rates, among which may be mentioned the following:

(*a*) The Standard Freight Tariff established by the Georgia Railroad Commission, showing rates for a distance of 424

miles, the distance from New Orleans to Lagrange, more than 30 per cent less than the Lagrange rates complained of.

(Record, pp. 245, 246.)

This Georgia Standard Freight Tariff is indorsed as a measure or standard of reasonableness in the answer of the carriers and in the testimony of their witnesses.

Paragraph XIII, answer; record, p. 20.

Answers of witnesses for carriers to interrogatory 5, record, pp. 370, 376, 391.

See original printed argument filed in this court, Chapter VII, pp. 29–31.

(*b*) Joint Freight Tariff of the Southern Railway Company (Southern system), I. C. C. No. 3910, showing rates for a distance of 424 miles, the distance from New Orleans to Lagrange, more than 30 per cent less than the Lagrange rates complained of.

Record, pp. 247, 248.

See printed argument filed in this case in this court, pp. 39–41.

(*c*) Local Freight Tariff No. 1047 (Western system) of the Southern Railway, applying on business in the States of Georgia and Alabama, showing rates for a distance of 424 miles, the distance from New Orleans to Lagrange, more than 30 per cent less than the Lagrange rates complained of.

Record, pp. 247, 248.

Printed argument filed in this court in this case, p. 40.

(*d*) Local Distance Tariff of the Illinois Central Railway Company (Southern lines) showing rates for a distance of 424 miles, the distance from New Orleans to Lagrange, more than 30 per cent less than the Lagrange rates complained of in this case.

Record, pp. 247, 248.

Printed argument filed in this court, p. 41.

(*e*) Statement of revenue per ton per mile of roads throughout the United State and roads in Georgia, Alabama, Mississippi, Tennessee, Florida, Kentucky, West Virginia, Virginia, North Carolina, and South Carolina, which revenue per ton per mile is only about one-fourth as great as the rates per ton per mile yielded by the Lagrange rates complained of.

Record, p. 244.

Printed argument filed in this court, pp. 24, 26.

(*f*) Proof that the Lagrange rates are not the lowest combination, the lowest combination being on Opelika and not on Atlanta.

Record, bot. p. 282, 332, 176.

Printed argument filed in this court, pp. 66–69.

There are numerous other grounds upon which it was contended in behalf of the Commission before the court that the Lagrange rates were excessive, among them the fact that, while the traffic from New Orleans was delivered at Lagrange, the Lagrange rates embraced the charge for the haul through Lagrange, 71 miles on to Atlanta, and a high local rate 71 miles back, an aggregate of 142 miles. *Printed argument filed in this court, pp. 47–50.*

5. The opinion of this court states that "the report of the Commission makes no reference whatever to any intrinsic disparity between the Lagrange rates and those prevailing at *other noncompetitive points.*"

(*a*) The suit in court being *de novo* and based on new testimony, the court is not limited to facts referred to in the report of the Commission.

(*b*) The Lagrange rates are higher than the rates to all the longer-distance noncompetitive points *between Lagrange and Atlanta*, and also than the rates to all noncompetitive points *between Lagrange and Opelika*, the latter being based on Opelika.

(*c*) THE LAGRANGE RATES ARE HIGHER THAN THE RATES TO ALL POINTS, BOTH NONCOMPETITIVE AND COMPETITIVE, AND WHETHER LAGRANGE BE THE SHORTER OR LONGER DISTANCE POINT, ON THE ENTIRE LINE FROM NEW ORLEANS TO ATLANTA, THE RATES REACH THEIR HIGHEST ALTITUDE AT LAGRANGE.

6. The Opelika Combination.

After the testimony had been closed and the case argued and submitted in both the circuit court and the circuit court of appeals, in both which courts counsel for the complainant had called attention to the fact that the Lagrange rates were not the lowest combination, the lowest combination being on Opelika and not on Atlanta, the case was practically reopened by the filing with a member of the circuit court of appeals of of a rate sheet giving Lagrange the Opelika combination.

It was contended in behalf of the complainant that this was an admission that the Lagrange rates were excessive to the extent of the difference between the Opelika and Atlanta combinations and that it sustained the first subdivision of the order of the Commission, which simply forbids the exaction of excessive rates.

It was further contended that this did not obviate the necessity of a decree in favor of the Commission enforcing the first subdivision of the order because, if the complainant's bill was dismissed without such decree, there was nothing to prevent the carriers from returning to the Atlanta combination.

Printed argument filed in this court, pp. 70–72.

In commenting on this contention, this court says:

"The reasoning has abstract force, but its application to the case in hand is devoid of merit, since neither in the complaint made before the Commission nor in the evidence introduced for the complainant was any claim made that wrong had been done because of a combination of rates based on Atlanta instead of Opelika."

(*a*) It was not necessary to allege either in the complaint before the Commission or in the complaint in court that the Opelika combination was the lowest. The complaints before

the Commission and in court alleged that the Lagrange rates were excessive or unreasonable in themselves, and in support of this allegation the complainant *made proof* that the Opelika combination was lower than the Atlanta combination.

It was not necessary to allege matters of evidence in the complaints.

(*b*) Moreover, the defendant carriers in their answers, both before the Commission and in court, allege that Lagrange had the choice of only the Montgomery and the Atlanta combinations, and that the Atlanta combination was the lowest.

Paragraph XII, answer before Commission, Record, pp. 17, 20.

Paragraph XVII, answer in court, Record, pp. 69, 72.

The issue as to the lowest combination was thus presented.

(*c*) The complainant introduced evidence that the Opelika combination was the lowest by making proof of the rates from Montgomery to Opelika and from Opelika to Lagrange.

Record, bot. p. 282, 332.

Printed argument filed in this court, p. 67.

(*d*) The fact that the Opelika combination was the lowest was called to the attention of the circuit court and the circuit court of appeals and this court by testimony, by oral argument accompanied by chart showing the Atlanta and Opelika combinations, and by printed argument.

Printed argument filed in this court, p. 67.

(*e*) The Opelika combination was not given to Lagrange until May 15, 1900, about six months after the case had been heard by the circuit court and decided in favor of the Commission.

We respectfully renew our contention that the action of the defendant carriers in giving Lagrange the Opelika combination, not only after the suit had been brought, but after the testimony had been closed and the case argued and submitted, and after counsel for the complainant had insisted that Lagrange was at least entitled to the Opelika combination, was an admission that the Lagrange rates were excessive to the extent of the difference between the Atlanta and Opelika combinations, and that this entitled the complainant

to a decree enforcing the first subdivision of the order of the Commission, which simply forbids the exaction of excessive rates, and that the dismissal of the Commission's bill of complaint without such decree leaves the defendant carriers at liberty to reinstate the rates originally complained of.

7. The opinion of this court in this case holds that that clause in the order of the Commission which forbids higher rates to Lagrange than to longer distance local stations, Hogansville, Newnan, Palmetto, and Fairburn, "makes it clear that no independent finding as to the unreasonableness of the rates was made, since it allows the carriers to continue to charge the rates complained of to Lagrange, provided that no higher rates were charged to the more distant points between there and Atlanta;" in other words, that that clause of the order is inconsistant with a finding that the rates were unreasonable.

(*a*) In the first place, the Commission *expressly finds* at the conclusion of its opinion that the Lagrange rates are in violation of section 1 of the law which forbids unreasonable rates. Record p. 48.

(*b*) In the next place, the second clause or subdivision of the order of the Commission is as follows:

"That said defendants and each of them cease and desist from charging, demanding, collecting, or receiving the following UNREASONABLE, UNJUST, AND UNLAWLUL RATES for the transportation from New Orleans to Lagrange of articles embraced in the various classes of their freight classification—that is to say:" (Here follow the Lagrange rates complained of.)

The different clauses or subdivisions of the order are to be construed together, and, construing the above clause with that forbidding higher rates to Lagrange than to Hogansville, etc., it must be held that the latter clause was intended to be complied with by reducing the Lagrange rates so as to make them not higher than the rates to Hogansville, etc.

(*c*) In the third place, as the proceedings before the court

are *de novo* and based on new testimony, it follows that *if the testimony before the court shows the unreasonableness of the rates, the court should find them to be unreasonable whether the Commission so found or not.*

If unreasonable, this calls for the enforcement of the first clause or subdivision of the order which simply forbids the exaction of unreasonable rates to Lagrange.

8. The proceedings in court being new and independent proceedings, based on new pleadings and new testimony, and the courts being required to "do justice" on the entire body of the testimony before them, an erroneous conclusion of the Commission from the facts should not prevent the enforcement of its order by the court if the testimony before the court justifies the order, or any part of it.

This was evidently the intention of the statute.

9. This court in its opinion states that "it was and is conceded that the rates on through freight from New Orleans to Atlanta were the result of competition at Atlanta, and that there was hence such a dissimilarity of circumstances and conditions as justified the lesser charge for the carriage of freight from New Orleans to Atlanta, the longer distance point, than was exacted for the haul from New Orleans to La Grange, the shorter distance point."

In our oral and printed arguments in this case and in both the lower courts we contended that the Atlanta rates were reasonably high in themselves, and that they were the result *not of competition, but of agreement.*

We give below a summary of the grounds upon which we contended before this court and the other courts that the Atlanta rates were reasonably high in and of themselves.

(*a*) Prima facie presumption that rates charged will be reasonably high.

(*b*) This presumption strengthened when rates have been charged for a long period of time, as in the present case.

(*c*) Atlanta rates established by *agreement*. No reason why rates agreed upon should not be reasonably high.

(*d*) Atlanta rates and rates on the same basis to other competitive points, when applied to the bulk of the traffic of the defendants, have proven fairly remunerative.

(*e*) Rates per ton per mile under Atlanta rates much higher than revenue per ton per mile of roads in Southern territory and throughout the United States.

Printed argument filed in this court, pp. 93–106.

It is self-evident that if the Atlanta rates are reasonably high in and of themselves there can be no justification for higher rates for the shorter haul to Lagrange. The ground upon which it is claimed by the carriers that competition justifies lower rates for a longer than a shorter haul is that competition has compelled the carriers to accept unreasonably low rates to the longer-distance points.

10. **The opinion of the circuit court of appeals.**

The only opinion—if it may be called an opinion—delivered by the circuit court of appeals is as follows:

"Considering the opinions of the Supreme Court of the United States in *Interstate Commerce Commission* v. *The Clyde Steamship Company et als.* and *The East Tennessee, Virginia and Georgia Railway Company et als.* v. *The Interstate Commerce Commission*, recently decided, not yet reported, this case is remanded to the circuit court with instructions to set aside its decree, adjudging that the order of the Commission be enforced and dismiss the application made for that purpose, with costs, the whole to be without prejudice to the right of the Commission to proceed upon the evidence already introduced before it, or upon such further pleadings and evidence as it may allow to be made or introduced, to hear and determine the controversy according to law." (Record, p. 429.)

This court in its opinion infers from the authorities cited by the circuit court of appeals that that court "concluded that the rates charged to Lagrange did not constitute a violation of the third and fourth sections of the act" and "so far as the reasonableness *per se* of the rates was concerned ordered the case to be dismissed without prejudice to further proceedings, because it was of opinion that in the consideration of this question the Commission had been in effect controlled by its finding, held to have been erroneous, that there had been violations of the third and fourth sections of the act."

In the cases cited the Commission held that *it could not consider competition by carriers subject to the act unless set up on application for relief under the proviso to the fourth section.* This court held that ruling to be erroneous, and because of that ruling alone rendered a decree such as was rendered by the circuit court of appeals in the present case.

The Commission avoided any such ruling in the present case, and expressly states that it has given consideration to competition of all kinds and to every matter of defense set up by the defendants.

See petition for rehearing, Record, page 425.

No matter presented to the Commission, either by the pleadings or the testimony before it, can be pointed out to which the Commission did not give full consideration.

To practically remand the case to the Commission under such circumstances, the Commission having considered every matter presented to it, and without the court's giving any consideration whatever to the additional testimony taken in court, will be to in effect render these proceedings interminable, will defeat the requirement of the statute that *justice*

shall be done in these cases "speedily," and will be tantamount to a denial of justice.

Respectfully submitted.

L. A. SHAVER,
Solicitor for the Appellant.

I, L. A. Shaver, counsel for the Interstate Commerce Commission, appellant in the above-stated cause, hereby certify that the foregoing petition for a rehearing is not interposed for delay and that the same is, in my judgment, well founded. This the 27th day of May, 1903.

L. A. SHAVER,
Solicitor for the Appellant.

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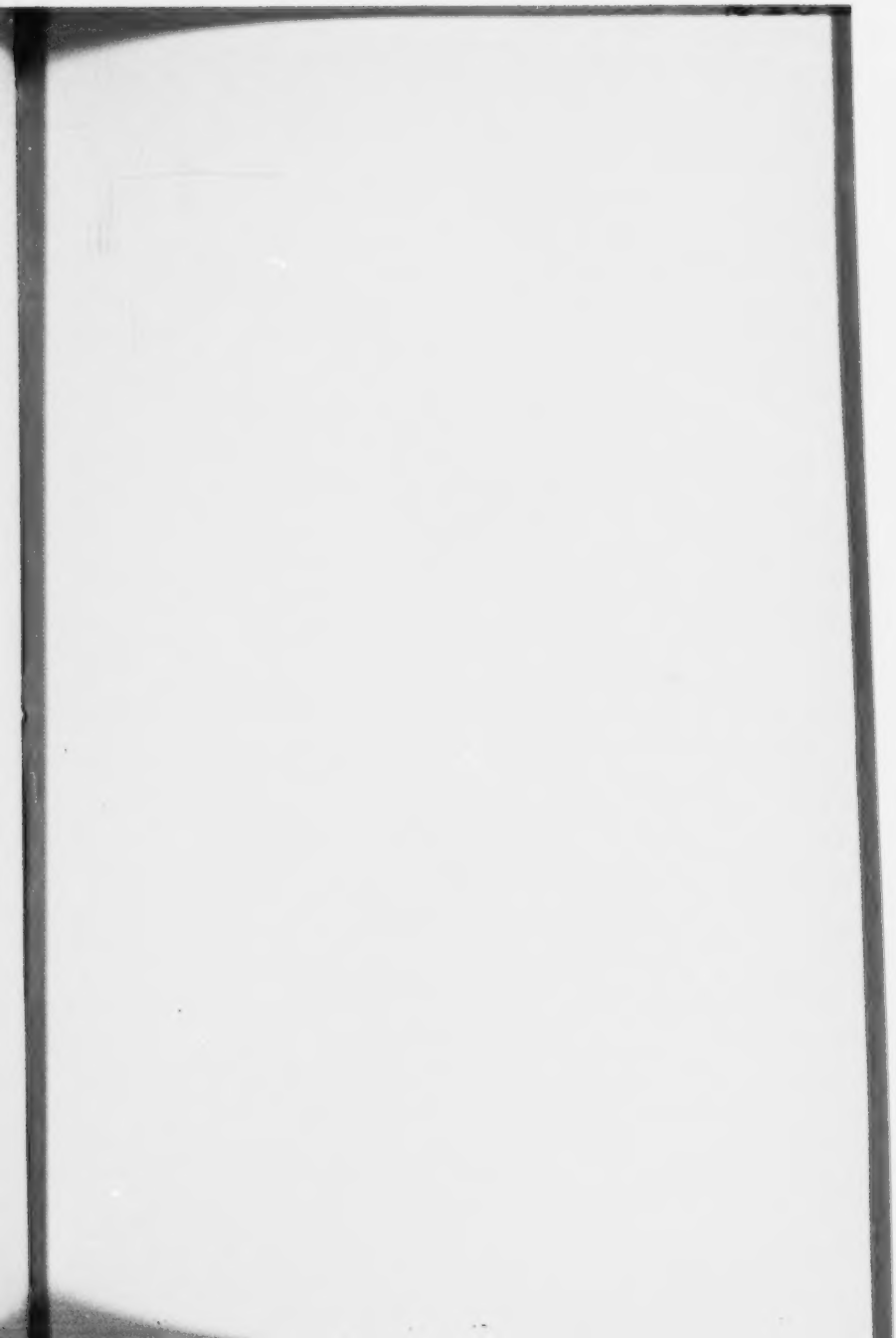

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In the Supreme Court of the United States.

OCTOBER TERM, [illegible]

NO. 214.

FILED
APR 6 1903
JAMES H. MCKENNEY,
Clerk.

THE INTERSTATE COMMERCE COMMISSION,
Appellant,

vs.

THE LOUISVILLE AND NASHVILLE RAILROAD COMPANY,
THE WESTERN RAILWAY OF ALABAMA, AND
THE ATLANTA AND WEST POINT
RAILROAD COMPANY,
Appellees.

Appeal from the United States Circuit Court of Appeals for the Fifth Circuit.

Argument of E.D. BAXTER,
of Counsel for Appellees.

April 3, 1903.

Printed by Gibson Brothers

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In the Supreme Court of the United States,

OCTOBER TERM, 1901.

No. 214.

THE INTERSTATE COMMERCE COMMISSION,
APPELLANT.

vs.

THE LOUISVILLE AND NASHVILLE RAILROAD COMPANY,
THE WESTERN RAILWAY OF ALABAMA, AND
THE ATLANTA AND WEST POINT
RAILROAD COMPANY,
APPELLEES.

Appeal from the United States Circuit Court of Appeals for the Fifth Circuit.

Argument of ED. BAXTER,
of Counsel for Appellees.

STATEMENT OF THE CASE.

I.

THE DECREE APPEALED FROM.

The appellant, the Interstate Commerce Commission, appeals from a decree rendered by the United States Circuit Court of Appeals for the Fifth Circuit, reversing a decree rendered by the

Circuit Court of the United States for the Southern District of Alabama, at Mobile, Ala., on the 2d day of December, 1899 (Trans., pp. 399, 400), which enjoined the appellees to obey a certain order made by the Interstate Commerce Commission on the 31st day of December, 1897; which order directed the appellees to desist from charging "any greater compensation in the aggregate for the transporting of freight articles from New Orleans, La., for the shorter distance to La Grange, Ga., than they contemporaneously charge" . . . "for transporting the like kind of freight traffic from New Orleans for the longer distance, over the same line, in the same direction, to Hogansville, or Newnan, or Palmetto, or Fairburn, Ga., the shorter being included within the longer distance."

And said last mentioned order also "recommended" that the appellees "so revise their schedules of rates and charges that the aggregate compensation charged and collected by them from New Orleans to La Grange (on) freight articles embraced in the several classes shall not exceed" certain specified rates which are not higher than the rates which the appellees charge from New Orleans, La., to Atlanta, Ga.

Trans., pp. 48 to 51.

II.

Proceedings Before the Commission. The Petition.

Fuller E. Calloway filed a petition before the Interstate Commerce Commission against the appellees.

Said petition averred, among other things, that the appellees had heretofore established, and do now charge, demand, collect, and receive from complainant, and other shippers, or consignees, certain rates per hundred pounds for the through transportation

of various classes or kinds of freight articles, from New Orleans, in the State of Louisiana, to La Grange, Hogansville, Newnan, Palmetto, and Fairburn, in the State of Georgia.

That said rates per hundred pounds from New Orleans to La Grange yield the appellees rates per ton for each mile of haul ranging from over 1⅓ cents on the lowest rate, to nearly 6¾ cents on the highest or Class A rate, and are excessive, unreasonable, and unjust charges for the service rendered both in themselves, and relatively, as compared with rates charged by the appellees from New Orleans to Hogansville, Newnan, Palmetto, and Fairburn, and with rates in force over the appellees' roads from New Orleans to other localities.

That said rates from New Orleans to La Grange, and other points, unjustly discriminate against the complainant and others, the city of La Grange and vicinity, and traffic thereto, and subject merchants and dealers therein to undue and unreasonable prejudice and disadvantage in favor of merchants and dealers at Hogansville, Newnan, Palmetto, Fairburn, and other localities, and traffic consigned thereto.

That said rates are in violation of Sections 1, 2 and 3 of the Act to Regulate Commerce.

That said rates from New Orleans to La Grange, Hogansville, Newnan, Palmetto, and Fairburn give the appellees greater compensation in the aggregate for the transportation of like kind of property, under substantially similar circumstances and conditions, for the shorter distance from New Orleans to La Grange, than for the longer distance over the same line in the same direction from New Orleans to Hogansville, Newnan, Palmetto, or Fairburn, and are in violation of Section 4 of the Act to Regulate Commerce.

Said petition prayed, among other things, that an order be made commanding the appellees to cease and desist from the aforesaid violations of the Act to Regulate Commerce, and to establish and charge transportation rates from New Orleans to La Grange not in excess of charges which may be found reasonable, just, and lawful; and for such other and further order or orders as the Commission might deem necessary or just in the premises.

Trans., pp. 5, 7.

III.

The Answer to the Petition Filed Before the Commission.

The appellees filed a joint and several answer before the Commission.

They admit that they have heretofore established, and do now charge, demand, collect, and receive from shippers or consignees, certain rates per 100 pounds for the through transportation of various classes or kinds of freight articles, from New Orleans, in the State of Louisiana, to La Grange, Hogansville, Newnan, Palmetto, and Fairburn, in the State of Georgia.

They admit that said rates are correctly set forth in the complaint, with certain exceptions which need not now be enumerated.

They admit that said rates per 100 pounds from New Orleans to La Grange yield them rates per ton, for each mile of haul, ranging from 1.36 cents on the lowest class (D), to 6.71 cents on the highest class (1); but they deny that any of said rates are excessive, unreasonable, or unjust charges for the service ren-

dered, either in themselves, or as compared with rates charged by appellees from New Orleans to Hogansville, Newnan, Palmetto, or Fairburn, or as compared with rates in force over appellees' roads from New Orleans to other localities—where the transportation to such other localities is conducted under circumstances and conditions substantially similar to those under which the transportation from New Orleans to La Grange is conducted.

They deny that any of said rates charged by them from New Orleans to La Grange, as compared with rates charged by them from New Orleans to other points, are unjustly discriminative against complainant, or any other person, or against the city of La Grange or its vicinity, or the traffic thereof.

They deny that any of said rates subject merchants or dealers at La Grange to any undue or unreasonable prejudice or disadvantage, or that they give any undue or unreasonable preference or advantage to merchants or dealers at Hogansville, Newnan, Palmetto, Fairburn, or other localities, or to traffic consigned thereto.

They deny that any of said rates violate Sections 1, 2 or 3 of the Act to Regulate Commerce.

They admit that the rates charged and collected by them from New Orleans to La Grange yield a greater compensation in the aggregate for the transportation of like kinds of property, for the shorter distance from New Orleans to La Grange, than for the longer distance over appellees' roads in the same direction from New Orleans to Hogansville, Newnan, Palmetto, or Fairburn; but they deny that the transportation of property from New Orleans to La Grange is conducted under substantially similar circumstances and conditions with the transportation of property from New Orleans to either Hogansville, Newnan, Pal-

metto, or Fairburn; and therefore they deny that said rates are in violation of Section 4 of the Act to Regulate Commerce.

They aver that the Louisville & Nashville Railroad Company operates a railroad from New Orleans, La., to Montgomery, Ala.; the Western Railway of Alabama operates a railroad from Montgomery, Ala., to West Point, Ga.; and the Atlanta & West Point Railroad Company operates a railroad from West Point to Atlanta, Ga.

They aver that La Grange, Hogansville, Newnan, Palmetto, and Fairburn are all local stations, situated on the Atlanta & West Point Railroad, between Montgomery, Ala., and Atlanta, Ga.

Beginning at Montgomery on the west, and going eastwardly, the distance from Montgomery to La Grange is 104 miles; from Montgomery to Hogansville, 117 miles; from Montgomery to Newnan, 136 miles; from Montgomery to Palmetto, 150 miles; and from Montgomery to Fairburn, 157 miles.

They aver that freight shipped from New Orleans, over their above described roads, destined to La Grange, would, if distance alone could control, be charged lower rates than freight shipped from New Orleans to any other one of said local stations. In fact, the rates from New Orleans to said local stations, respectively, would, if distance alone could control, increase as their respective distances from New Orleans increase.

If it were possible in that section of the country to adjust freight rates on the basis of distance alone, the rates from New Orleans to said local stations would be made by adding the rates from New Orleans to Montgomery to the rates from Montgomery to said local stations, respectively.

The following table, (A), shows what said rates would be if it were possible for appellees to use distance, as a controlling factor, in making said rates:

TABLE A.

Rates from New Orleans, La., to certain local stations on the Atlanta & West Point Railroad, arrived at by adding rates from New Orleans, La., to Montgomery, Ala., to rates from Montgomery to said local stations.

	CLASS. RATES PER 100 POUNDS.												Per Barrel.
	1	2	3	4	5	6	A	B	C	D	E	H	F
New Orleans to Montgomery...	94	88	74	59	48	37	24	27	20	16	44	29	32
Montgomery to LaGrange.....	75	65	59	45	38	31	31	33	27	22.5	41	45	52.5
New Orleans to LaGrange.....	169	153	133	104	86	68	55	60	47	38.5	85	74	84.5
New Orleans to Montgomery...	94	88	74		48	37	24	27	20	16	44	29	32
Montgomery to Hogansville....	81	70	63		41	33	33	35	28.5	23.5	44	51	55
New Orleans to Hogansville..	175	158	137	110	89	70	57	62	48.5	39.5	88	80	87
New Orleans to Montgomery...	94	88	74	59	48	37	24	27	20	16	44	29	32
Montgomery to Newnan.....	88	77	70	56	46	35	35	37	25.5	24	49	56	51
New Orleans to Newnan	182	165	144	115	94	72	59	64	45.5	40	93	85	83
New Orleans to Montgomery..	94	88	74	59	48	37	24	27	20	16	44	29	32
Montgomery to Palmetto.....	91	80	72	58	47	36	36	38	30	25.5	46	58	58
New Orleans to Palmetto	185	168	146	117	95	73	60	65	50	41.5	90	87	90
New Orleans to Montgomery...	94	88	74	59	48	37	24	27	20	16	44	29	32
Montgomery to Fairburn.....	95	83	74	60	48	38	33	40	30.5	26	45	60	59
New Orleans to Fairburn	189	171	148	119	96	75	60	67	50.5	42	89	89	91

They aver that the rates which they would realize, were it possible to base said rates upon distance alone, would, as shown in said table, be very materially higher than the rates now actually charged by them; and that it would therefore be manifestly to their advantage to base said rates on distance alone, if it were possible for them to do so.

They aver, however, that it is not possible to base said rates on distance alone; and they state the following as reasons why

they are compelled to accept rates which are very much lower than might be reasonably charged if they could utilize distance as a controlling factor.

First: Atlanta, Ga., is the pivotal point for the purpose of rate making, into, and out of the territory south of the Ohio River, and east of the Mississippi River.

Second: The rates on every class of freight from Baltimore, and other Northeastern supply markets, to Atlanta, are controlled by the low rates accepted by steamships and sailing vessels from Baltimore to Savannah, and by steamboats on the Savannah River from Savannah to Augusta; added to rail rates established by the Georgia Railroad Commission from Augusta to Atlanta.

Baltimore, and other Northeastern supply markets, compete with each other for the trade of Atlanta; and numerous carriers, whose lines extend from Baltimore, and other Northeastern supply markets, to Atlanta, compete with each other for the carriage of traffic passing between said points. Some of said carriers are part rail and part water, and some of them are all rail.

The competition between Baltimore, and other Northeastern supply markets, as well as the competition between the numerous carriers whose lines extend from said markets to Atlanta, is active, aggressive and effective.

Third: Cincinnati, Ohio, and Louisville, Ky., are important supply markets, situated on the Ohio River; and they have lines of railway which extend to Atlanta.

Every class of freight that is shipped from New Orleans to Atlanta, is also shipped to Atlanta from Cincinnati, Louisville, and other Ohio River points, as well as from Baltimore, and other Northeastern supply markets.

Cincinnati, Louisville, and other Ohio River supply markets, not only compete with each other, but they also compete with Baltimore, and other Northeastern supply markets for the trade of Atlanta. And the various rail carriers whose lines extend from Cincinnati, Louisville, and other Ohio River supply markets, to Atlanta, not only compete with each other for the carriage of traffic passing between the Ohio River and Atlanta, but they use every effort to induce Atlanta to purchase her supplies in the Northwest, so that they may secure the carriage of them. The result is, that there is actual, aggressive, and effective competition as between the carriers whose lines extend from Cincinnati, Louisville, and other Ohio River supply markets, to Atlanta, as against the carriers whose lines extend from Baltimore, and other Northeastern supply markets, to Atlanta.

Fourth: New Orleans is situated on the Mississippi River, with deep water navigation to the ocean. There are also a number of railways entering at that point. The result is that New Orleans is an important supply market, and her merchants naturally desire to compete in Atlanta, with Baltimore, and the other Northeastern supply markets, as well as with Cincinnati, Louisville, and other Ohio River supply markets.

In order to enable the New Orleans merchants to compete in the Atlanta market, it becomes absolutely necessary that appellees and other rail carriers whose roads extend from New Orleans to Atlanta shall offer approximately as low rates on the various classes of freight as are accepted by the carriers whose lines extend from Baltimore, and other Northeastern supply markets, to Atlanta; or as are accepted by the carriers whose lines extend from Cincinnati, Louisville, and other Ohio River supply markets, to Atlanta.

If appellees and the other carriers whose roads extend from New Orleans to Atlanta should materially increase the rates be-

tween those points, it would be impossible for the New Orleans merchants to sell in the Atlanta market in competition with the merchants of Baltimore, and other Northeastern supply markets, or in competition with the merchants at Cincinnati, Louisville, and other Ohio River supply markets.

Such an increase of rates would not only drive New Orleans out of the Atlanta market, but it would also prevent appellees and other carriers from getting any traffic for transportation from New Orleans to Atlanta.

Fifth: The rates which can be obtained by appellees for the transportation of the various classes of freight from New Orleans to Atlanta are absolutely controlled by the following competitive circumstances and conditions, viz.:

1. Competition of markets.

(*a*) The competition between Baltimore, and other Northeastern supply markets, as against each other, for the trade of Atlanta.

(*b*) The competition between Cincinnati, Louisville, and other Ohio River supply markets, as against each other, for the trade of Atlanta.

(*c*) The competition of Baltimore, and other Northeastern supply markets, as against Cincinnati, Louisville, and other Ohio River supply markets, and against New Orleans as a supply market, for the trade of Atlanta.

2. Competition between carriers.

(*a*) The competition as against each other, of the various car-

riers whose lines extend from Baltimore, and other Northeastern supply markets, to Atlanta.

(*b*) The competition as against each other, of the various carriers whose lines extend from Cincinnati, Louisville, and other Ohio River supply markets, to Atlanta.

(*c*) The competition as against each other, of the various carriers whose lines extend from New Orleans to Atlanta.

(*d*) The competition as against each other, of the several classes of carriers last above designated as *a*, *b*, *c*.

The appellees aver that the competitive circumstances and conditions, above referred to, have existed for many years, and have resulted in establishing certain relative rates between said various supply markets and the city of Atlanta. The relation existing between said rates being as follows:

First: The rates on the numbered classes from Boston, New York, and Philadelphia to Atlanta, are certain fixed differentials higher than the rates from Baltimore to Atlanta.

Second: The rates on the numbered classes from Cincinnati, and from Louisville, to Atlanta, are made as low as the rates from Baltimore to Atlanta.

Third: The rates on the numbered classes from New Orleans to Atlanta are made 4 cents per 100 pounds less than the rates from Cincinnati and Louisville to Atlanta.

The relation existing between said rates is the result of frequent and disastrous rate wars between the rival carriers in the past; and any attempt to disturb said relation would immediately lead to a repetition of such wars.

The opposite diagram (1) sufficiently represents the relative position of said various supply markets with reference to Atlanta; and it also shows the lines of some of the competing carriers, which extend from said supply markets, respectively, to Atlanta.

The appellees aver that it is impossible to materially increase the rates from New Orleans to Atlanta, without driving New Orleans, and her carriers, out of the Atlanta market; unless the rates from said other supply markets to Atlanta, should be increased correspondingly.

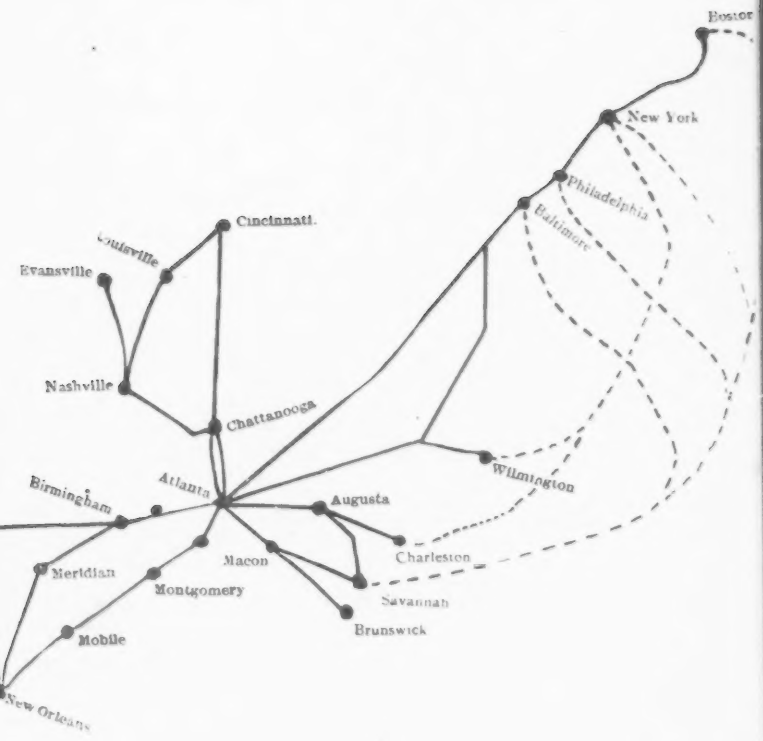
Similar competitive circumstances and conditions have resulted in establishing similar relations between the rates from said various supply markets, respectively, to the city of Montgomery; and also between the rates from said supply markets, respectively, to Atlanta, as compared with the rates from the same markets to Montgomery.

The following table, (B), will show the relation which has been thus established between the rates from New Orleans to Montgomery, and the rates from New Orleans to Atlanta:

TABLE B.

Rates from New Orleans to Montgomery, as compared with rates from New Orleans to Atlanta.

DIAGRAM NO. 1.


Boston
New York
Philadelphia
Baltimore
Cincinnati
Louisville
Evansville
Nashville
Chattanooga
Wilmington
Birmingham
Atlanta
Augusta
Macon
Charleston
Meridian
Montgomery
Savannah
Brunswick
Mobile
New Orleans

	CLASSES.												
	1	2	3	4	5	6	A	B	C	D	E	H	F
New Orleans to Montgomery	94	88	74	59	48	37	24	27	20	16	44	29	22
New Orleans to Atlanta.....	103	88	77	64	52	42	24	31	23	20	44	49	40

The appellees aver that it is impossible to increase the rates from New Orleans to Atlanta without making a corresponding increase in the rates from New Orleans to Montgomery; as to do so, would give to Montgomery an undue advantage of Atlanta, in the competition which has for many years existed between those two cities, as rival markets of consumption.

The appellees aver that the relation which exists between the rates from New Orleans to Montgomery and the rates from New Orleans to Atlanta, having been established by the competitive circumstances and conditions, above referred to, local non-competitive stations, such as La Grange, Hogansville, Newnan, Palmetto, and Fairburn, situated between Montgomery and Atlanta, have the choice of rates which can be made by adding the rates from New Orleans to Montgomery, to the rates from Montgomery to said local stations, respectively (as shown above in table A); or rates which can be made by adding the rates from New Orleans to Atlanta, to the rates from Atlanta to those stations, respectively (as shown below in table C).

TABLE C.

Rates from New Orleans to certain local stations on the Atlanta & West Point Railroad, arrived at by adding rates from New Orleans, La., to Atlanta, Ga., to rates from Atlanta to said local stations.

	Classes.												
	1	2	3	4	5	6	A	B	C	D	E	H	F
New Orleans to Atlanta	103	88	77	64	52	42	24	31	24	20	44	49	40
Atlanta to La Grange	40	36	32	29	22	17	17	17	9.5	9	22	....	19
New Orleans to La Grange	143	124	109	93	74	59	41	48	33.5	29	66	74	59
New Orleans to Atlanta	103	88	77	64	52	42	24	31	24	20	44	49	40
Atlanta to Hogansville	36	33	30	26	21	15	15	15	9	8.5	21	26	18
New Orleans to Hogansville	139	121	107	90	73	57	39	46	33	28.5	65	75	58
New Orleans to Atlanta	103	88	77	64	52	42	24	31	24	20	44	49	40
Atlanta to Newnan	30	26	24	22	18	13	13	13	8	7.5	18	22	16.5
New Orleans to Newnan	133	114	101	86	70	55	37	44	32	27.5	62	74	56.5
New Orleans to Atlanta	103	88	77	64	52	42	24	31	24	20	44	49	40
Atlanta to Palmetto	24	22	20	18	14	12	12	12	7.5	6.5	14	18	15
New Orleans to Palmetto	127	110	97	82	66	54	36	43	31.5	26.5	58	67	55
New Orleans to Atlanta	103	88	77	64	52	42	24	31	24	20	44	49	40
Atlanta to Fairburn	22	20	18	15	13	11	11	11	7	6	13	15	14
New Orleans to Fairburn	125	108	95	79	65	53	35	42	31	26	57	64	54

A comparison between said tables A and C will show that lower rates to La Grange, Hogansville, Newnan, Palmetto, and Fairburn, can be obtained from New Orleans by basing the rates on Atlanta, than by basing them on Montgomery.

Such a comparison is made in the following table D:

TABLE D.

Rates from New Orleans, La., to certain local stations on the Atlanta & West Point Railroad, based on Montgomery, compared with rates from New Orleans to said local stations based on Atlanta.

	Per 100 Pounds												Per bbl.
	1	2	3	4	5	6	A	B	C	D	E	H	F
New Orleans to La Grange, based on Montgomery	169	153	133	104	86	68	55	60	47	38.5	85	74	84.5
New Orleans to La Grange, based on Atlanta	143	124	109	93	74	29	41	48	33.5	29	66	74	59
Difference, favor Atlanta	26	29	24	11	12	9	14	12	13.5	9.5	19	.....	25.5
New Orleans to Hogansville, based on Montgomery	175	158	137	110	89	70	57	62	48.5	39.5	88	80	87
New Orleans to Hogansville, based on Atlanta	139	121	107	90	73	57	39	46	33	28.5	65	75	58
Difference, favor Atlanta	36	37	30	20	16	13	18	16	15.5	11	23	5	29
New Orleans to Newnan, based on Montgomery	182	165	144	115	94	72	59	64	45.5	40	93	85	83
New Orleans to Newnan based on Atlanta	133	114	101	86	70	55	37	44	32	27.5	62	71	55
Difference, favor Atlanta	49	51	43	29	24	17	22	20	13.5	12.5	31	14	27.5
New Orleans to Palmetto, based on Montgomery	185	168	146	117	95	73	60	65	50	41.5	90	87	90
New Orleans to Palmetto, based on Atlanta	127	110	97	82	66	54	36	43	31.5	26.5	58	67	55
Difference, favor Atlanta	58	58	49	35	29	19	24	22	18.5	15	32	20	35
New Orleans to Fairburn, based on Montgomery	189	171	148	119	96	75	60	67	50.5	42	89	89	91
New Orleans to Fairburn, based on Atlanta	125	108	95	79	65	53	35	42	31	26	57	64	54
Difference, favor Atlanta	64	63	53	40	31	22	25	25	19.5	16	32	25	37

Merchants at La Grange, Hogansville, Newnan, Palmetto, and Fairburn, respectively, have choice of rates from New Orleans based on Montgomery, or rates from New Orleans based on Atlanta; but as rates from New Orleans based on Atlanta are lower than they would be if based on Montgomery, appellees have adopted rates based on Atlanta, as being more to the advantage of merchants at La Grange, Hogansville, Newnan, Palmetto, and Fairburn, respectively.

Appellees aver that the reason why rates from New Orleans, when based on Atlanta, are higher to La Grange than rates from New Orleans to Hogansville, Newnan, Palmetto, or Fairburn, is that La Grange, though nearer to New Orleans, is farther than any other of said local stations from Atlanta; Atlanta being the point upon which all of said rates are based.

If the rates from New Orleans to said local stations were based on Montgomery, instead of Atlanta, though the rates to La Grange would be lower than the rates to any other of said local stations, yet the rates to La Grange would be higher than those which appellees now charge.

The distance from Atlanta to Fairburn is 18 miles; from Atlanta to Palmetto, 25 miles; from Atlanta to Newnan, 39 miles; from Atlanta to Hogansville, 58 miles; and from Atlanta to La Grange, 71 miles.

Appellees aver that the rates from Atlanta to said local stations, respectively, are fixed by the Georgia Railroad Commission, and are just and reasonable.

The rates from New Orleans to Atlanta are fixed by competition between markets, and competition between carriers, as explained above, and are just and reasonable.

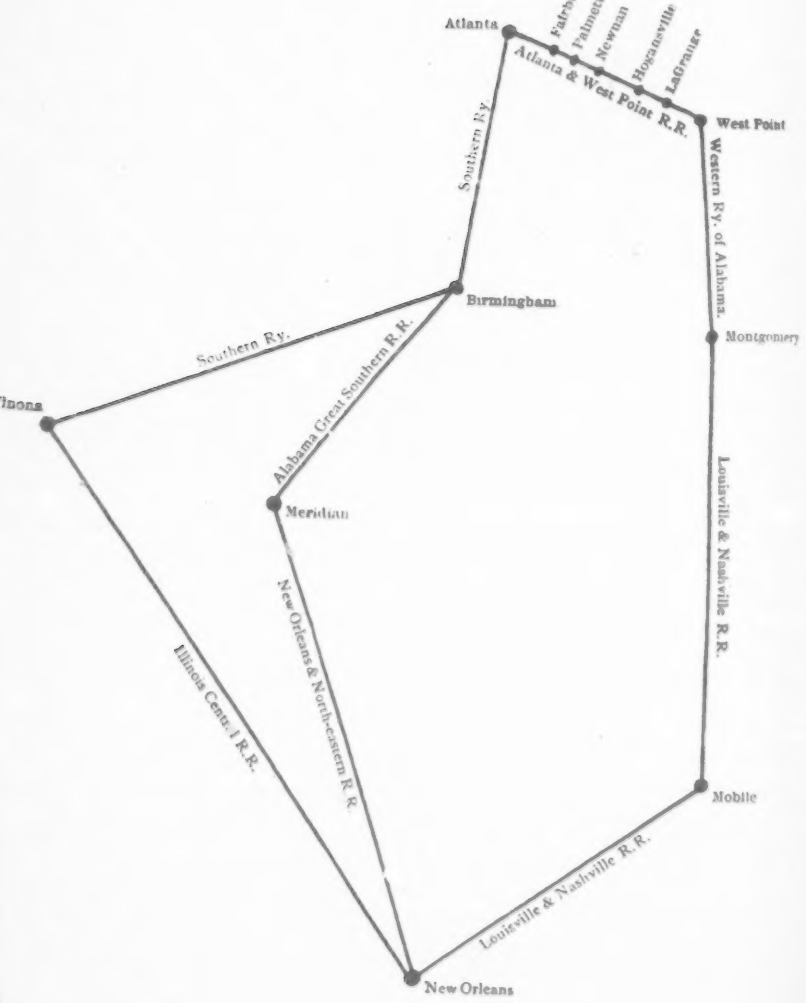
The rates charged by appellees from New Orleans to said local stations, respectively, are the sum of said competitive rates from New Orleans to Atlanta, added to said Georgia Railroad Commission rates; and therefore appellees' rates are themselves just and reasonable.

The reason why Fairburn, Palmetto, Newnan, and Hogansville, have lower rates than La Grange, is due alone to the fact that they are nearer than La Grange is to Atlanta; and it is not due to any favoritism or discrimination on the part of appellees.

The appellees aver that their principal competitors between New Orleans and Atlanta are:

First: The Illinois Central Railroad to Winona, and the Southern Railway from Winona to Atlanta; a distance of 646 miles.

DIAGRAM No. 2.


Atlanta
Fairburn
Palmetto
Newman
Hogansville
LaGrange
West Point
Atlanta & West Point R.R.
Western Ry. of Alabama.
Southern Ry.
Birmingham
Montgomery
Southern Ry.
Alabama Great Southern R.R.
Meridian
New Orleans & North-eastern R.R.
Louisville & Nashville R.R.
Illinois Central R.R.
Mobile
Louisville & Nashville R.R.
New Orleans

Second: The New Orleans & Northeastern Railroad to Meridian, the Alabama & Great Southern Railroad from Meridian to Birmingham, and the Southern Railway from Birmingham to Atlanta; a total distance of 526 miles.

The distance from New Orleans to Atlanta by appellees roads is 495 miles; or only 31 miles less than by the second route above described.

Said first and second routes are both in active, effective, and constant competition with appellees; and they carry all classes of freight from New Orleans to Atlanta at the same rates as are charged by appellees.

If appellees should attempt to materially increase the rates from New Orleans to Atlanta, and their said competitors should decline to increase their rates, appellees would simply lose the traffic; because it would all go by one or the other of said two competing routes.

The rates from New Orleans to Atlanta would remain precisely as they now are, and, by adding the Georgia Railroad Commission rates from Atlanta to Fairburn, Palmetto, Newnan, Hogansville, and La Grange, respectively, the rates from New Orleans to those stations would also remain precisely as they now are. La Grange would not be benefited in the least, and the only result would be to deprive the appellees of all participation in traffic from New Orleans destined to Atlanta; and to deprive New Orleans and Atlanta of the competition now afforded by appellees' route.

The opposite diagram (No. 2) sufficiently illustrates the principal competing routes between New Orleans and Atlanta:

Appellees aver that if they and their competitors who operate between New Orleans and Atlanta, should agree to increase the rates between those points, the traffic would simply be diverted from New Orleans to the rival supply markets referred to above. Merchants at Fairburn, Palmetto, Newnan, and Hogansville would purchase in those rival markets, ship their goods to Atlanta, and thence to their destination. They would have the same advantage in rates which they now have over La Grange; and the only result would be to destroy the commerce which now exists between New Orleans and Atlanta, and to deprive the carriers operating between those cities of such revenue as they have heretofore derived from that traffic.

Trans., pp. 8–23, inc.

IV.

The Hearing Before the Interstate Commerce Commission.

The case was heard before the Commission upon petition, answers, and testimony. The Commission filed its report and opinion.

See Trans., pp. 23–48, inc.

V.

The Order Made by the Interstate Commerce Commission.

The Commission made an order in the case.

The Commission ordered, among other things, that appellees, the Louisville & Nashville Railroad Company, the Western Railway of Alabama, and the Atlanta & West Point Railroad Company, each of them cease and desist:

1. From charging, collecting, or receiving "rates for the transportation of the several kinds or classes of freight from New Orleans, La., to La Grange, Ga., which, as a whole, or upon any article of merchandise, are in any respect unreasonable or unjust."

2. From charging, collecting, or receiving "the following unreasonable, unjust, and unlawful rates for the transportation from New Orleans, La., to La Grange, Ga., on articles embraced in the various classes of their freight classification; that is to say:

Classes; Rates in Cents Per 100 Pounds												Per barrel
1	2	3	4	5	6	A	B	C	D	E	H	F
143	124	109	93	74	59	41	48	33½	29	66	74	39

3. From charging, collecting, or receiving "rates or charges for the transportation of freight articles from New Orleans, La., to La Grange, Ga., which are equal to rates or charges contemporaneously in force over their railroads on like traffic carried from New Orleans, through La Grange, to Atlanta, Ga., *added to local rates in force on such traffic for local service over the Atlanta & West Point Railroad back from Atlanta to La Grange*, such combined rates having been found and held in and by said report and opinion of the Commission herein to be unreasonable, unjust, unduly prejudicial, and unlawful, and so unreasonable, unjust, unduly prejudicial, and unlawful *to the extent of such added local charges of the defendant the Atlanta & West Point Railroad Company*."

4. From charging, collecting, or receiving "any greater compensation in the aggregate for the transporting of freight articles from New Orleans, La., for the shorter distance to La Grange, Ga., than they contemporaneously charge, demand, collect, or receive for transporting the like kind of freight traffic from New Orleans for the longer distance over the same line, in

the same direction to Hogansville, or Newnan, or Palmetto, or Fairburn, Ga., the shorter being included within the longer distance."

5. From charging, collecting, or receiving "unreasonable, unjust, unduly prejudical, and unlawful rates for the transportation of freight articles from New Orleans to La Grange which are higher than aggregate rates contemporaneously charged, demanded, collected, or received by them, or either of them for the transportation of like kind of freight from New Orleans to Hogansville, or from New Orleans to Newnan, or from New Orleans to Palmetto, or from New Orleans to Fairburn."

6. "That said defendants (the appellees) and each of them in the transportation of freight articles from New Orleans, cease and desist from charging and collecting rates or compensation which subject complainant and other dealers and consignees at La Grange, Ga., their traffic, or the city of La Grange itself, to undue and unreasonable prejudice or disadvantage in any respect whatsoever, and also cease and desist from giving any undue or unreasonable preference or advantage to merchants, dealers, and consignees at *Atlanta*, Fairburn, Palmetto, Newnan, or Hogansville, or to their traffic, or to either of such cities or localities, namely, *Atlanta*, Fairburn, Palmetto, Newnan, or Hogansville, as against complainant and said other dealers and consignees at La Grange, or the city of La Grange itself."

"And it is further ordered and adjudged that said defendants (the appellees) be and they severally are hereby, recommended to so revise their schedule of rates and charges that the aggregate compensation charged and collected by them for the transportation from New Orleans to La Grange of freight articles embraced in the several freight classes shall not exceed reasonable, just, and lawful class rates in cents per 100 pounds and per barrel on Class F as follows, to wit:

Class.....	1	2	3	4	5	6	A	B	C	D	E	H	F
Rates..	103	88	77	61	52	42	24	31	24	20	44	49	40

(which are exactly the same as the rates from New Orleans to Atlanta); and that they make corresponding reductions or relatively reasonable and just changes in commodity rates, otherwise known as exceptions to class rates, from New Orleans to La Grange, aforesaid."

Trans., pp. 48–51, inc.

The appellees being advised that said order was not a lawful order, declined to obey it.

VI.

Proceedings in the Circuit Court.

The Interstate Commerce Commission filed a petition in the above entitled case, in the Circuit Court of the United States for the Southern District of Alabama, at Mobile, Ala., to enforce the order of the Commission made therein.

The appellees answered the same, denying the matters of equity therein alleged.

Additional testimony was taken in the Circuit Court by each party.

The testimony taken before the Commission was filed in the Circuit Court as evidence, for the appellees.

As stated above, in Section 1, the Circuit Court rendered a decree enjoining the appellees to obey the said order of the Commission; and from that decree the appellees prayed and obtained an appeal to the United States Circuit Court of Appeals for the Fifth Circuit.

Trans., pp. 418, 419.

VII.

Proceedings in the Circuit Court of Appeals.

The Circuit Court of Appeals ordered that the decree of the Circuit Court be remanded to said Circuit Court, with instructions to set aside its decree adjudging that the order of the Commission be enforced, and dismiss the application made for that purpose, with costs; the whole to be without prejudice to the right of the Commission to proceed upon the evidence already introduced before it, or upon such further pleadings and evidence as it may allow to be made or introduced, to hear and determine the controversy according to law.

Trans., p. 423.

The Interstate Commerce Commission filed a petition for rehearing (Trans., pp. 423, 426); which was denied by the Court.

Trans., p. 426.

Said Commission, therefore, appealed to this Court.

Trans., p. 427.

VIII.

The Circumstances and Conditions which Affect the Transportation of Property from New Orleans to Atlanta.

The Commission finds and reports that "Atlanta had a population of 64,000 in 1890, and this is estimated to have since increased to 100,000."

Trans., p. 32.

The Commission finds and reports that for the year ending June 30, 1895, the tonnage carried by the Atlanta & West Point Railroad, shipped from New Orleans to Atlanta, amounted to 6,773 tons; which was more than sixty times the tonnage carried over the same line for the same period from New Orleans to La Grange.

Trans., p. 40.

And it was more than sixty times the amount of tonnage carried over the same line for the same period from New Orleans to all local points on the Western Railway of Alabama and Atlanta & West Point Railroad, between Montgomery and Atlanta.

Trans., p. 91.

Mr. Lutz, Traffic Manager of the Atlanta & West Point Railroad and the Western Railway of Alabama, testifies that the revenue derived by appellees' lines for the year ending June 30, 1895, on traffic from New Orleans to Atlanta was $13,470.19; while on traffic from New Orleans to La Grange it was only $262.70.

Trans., p. 103.

The Commission finds and reports that "some ten or twelve lines are stated in testimony to compete for business between New Orleans and Atlanta;" that in point of fact "three roads take Atlanta traffic out of New Orleans," viz: "The Louisville & Nashville, Illinois Central, and New Orleans & Northeastern;" that "four roads deliver such in Atlanta," viz.: "The Atlanta & West Point, the Southern, the Central of Georgia, and Western & Atlantic;" that defendants' (appellees') route is the shortest, it being 496 miles; that the next shortest route to Atlanta in which none of the defendants (appellees) participates is via the New Orleans & Northeastern Railroad, and the Southern Railway, 526 miles; that the next shortest route is via the Illinois Central Railroad, and the Southern Railway, 647 miles;

and that the longest is via Illinois Central, Nashville, Chattanooga & St. Louis, and Western & Atlantic Railways, 882 miles.

The Commission also finds and reports that the Central of Georgia can receive traffic destined to Atlanta, at Montgomery, from the Louisville & Nashville Railroad, one of the appellees; and by that route Atlanta is 644 miles from New Orleans.

Trans., p. 29.

Mr. Knott, Vice President of the Louisville & Nashville Railroad, who had direction and supervision of the traffic of that company, testifies that there are some ten or twelve different routes competing for traffic between New Orleans and Atlanta; he specifies the different companies whose roads form portions of each of said routes; and he gives the distance from New Orleans to Atlanta by each of said routes.

Trans., p. 127.

Mr. Knott testifies that the Illinois Central Railroad actively competes for traffic at New Orleans; and that it secures traffic both via Winona, Miss., in connection with the Southern Railway; and via Jackson, Tenn., in connection with the Nashville, Chattanooga & St. Louis Railway.

He testifies that the New Orleans & Northeastern Railroad also solicits and secures a large portion of the traffic, by different connections, through Meridian and Selma; or Meridian and Birmingham; or Birmingham and Chattanooga.

Trans., p. 128.

Mr. Lutz testifies that the Illinois Central Railroad and the New Orleans & Northeastern Railroad actively compete at New Orleans with the Louisville & Nashville Railroad for the transportation of traffic from New Orleans to Atlanta.

Trans., p. 106.

Mr. Knott testifies that "none of the roads leading from New Orleans to Atlanta can be said to have made any rate at all. They simply accepted certain conditions which they found at Atlanta; and by agreement, or by arbitration, arranged to meet those conditions uniformly, by each of the several ten or twelve different routes competing for the business. But, as a matter of fact, the railroads can hardly be said to have made any rate at all; they have to accept the rates made."

Trans., pp. 130, 131.

The Commission finds and reports that for the year ending March 31, 1896, the total tonnage carried from New Orleans to Atlanta amounted to		11,113.20 tons.
Of which the Louisville & Nashville Railroad carried.....	7,636.05	
The Illinois Central Railroad carried..	1,523.00	
The New Orleans & Northeastern Railroad carried.....	1,954.15	—11,113.20 tons.

Trans., pp. 39, 85, 139, 140.

Mr. Lutz testifies that car-load freights, such as usually move from New Orleans to Atlanta, are, as a rule, loaded by the shipper; that they are loaded in solid car-load lots; that they are billed solid; that there is no rehandling at intermediate points; that "it goes right through to Atlanta;" and that it is there unloaded by the consignee.

Trans., p. 108.

Mr. Lutz also testifies that they always have a sufficient amount of freight at large cities, such as New Orleans, and Mobile, to load a solid car for Atlanta; that freights are loaded "right through;" and that there is no handling at junction points.

Trans., p. 109.

The Commission finds and reports that "the engines hauling trains running from Montgomery to Atlanta, haul an average of nearly twenty-one loaded cars, and their capacity is sufficient to haul ten more. But it is testified that traffic from New Orleans to Atlanta usually moves in car loads, either as a full car-load shipment or because there is daily a sufficient number of less than car-load shipments from New Orleans to Atlanta to make up a car load; and that the Atlanta cars go through from New Orleans to Atlanta without break of bulk or transfer at Montgomery, or other rehandling."

See also Trans., p. 107, 137.

The Commisssion finds and reports that Atlanta "is served by competing through lines of transportation from all sections, and the various primary markets of the country are in competition for Atlanta trade."

Trans., p. 32.

Again: In speaking of the competition at Atlanta, the Commission says:

"This includes both the competition of markets for supplying goods to Atlanta, and the competition of carriers for the carriage of freights to that point from New Orleans, and from Western, Northern and Northeastern cities."

Trans., p. 28.

Mr. Knott testifies that the various classes of freight which are shipped from New Orleans to Atlanta, over the lines of the appellee companies, are also shipped to a large extent from Cincinnati, Louisville, and other points on and beyond the Ohio River, to Atlanta.

Trans., p. 121.

Mr. Knott testifies that the various classes of freight which

are shipped from New Orleans to Atlanta over the lines of the appellee companies, are also shipped to a very great extent from other markets of supply, such as Boston, New York, Philadelphia, and Baltimore, to Atlanta.

Trans., p. 113.

Mr. Knott testifies that the rates on the various classes of freight from Boston, New York, Philadelphia, and Baltimore, to Atlanta are controlled by the rates of the water lines from Baltimore, Philadelphia, New York, Boston, and Providence to Charleston, Savannah, or Brunswick, added to the rates from Savannah, or Brunswick, or Charleston, to Atlanta. The rates from Savannah and Brunswick to Atlanta are fixed or controlled by the Georgia Railroad Commission; and they are also further affected by the competition of steamboats in the Savannah River, which enables rates to be made, up to the interior of the State, as far as Augusta, by the all-water lines from Eastern cities to Augusta; and the rates thus made to Augusta in turn affect the rates that can be charged from Savannah to Atlanta. In the transportation of freight from Boston, New York, Philadelphia, and Baltimore, respectively, to Atlanta, the all-rail lines on certain classes of traffic compete at a little higher rate than the rail and water rate; such higher all-rail rate being supposed to represent the slight difference in the service. There is, however, only a very small percentage of traffic carried from the cities of New York, Philadelphia, Boston, and Baltimore to Atlanta by the all-rail routes in competition with the rail and water lines. The all-rail lines probably get some business at some intermediate point, or some interior point not reached by the steamers, but not at the cities of New York, Philadelphia, Boston, or Baltimore.

Trans., pp. 119, 120.

The Commission finds and reports that for the year ended March 31, 1896, the tonnage to Atlanta was:

	TONS.
By all routes from Eastern and Northeastern points, including the Atlantic seaboard	170,365.26
By all routes from Ohio and Mississippi River points, and via Lexington, Ky., and from Nashville, Tenn., Johnsonville, Tenn., Florence, Sheffield, and Riverton, Ala	137,460.90
By all routes from New Orleans to Atlanta	11,113.20
Total	318,939.36

Trans., pp. 39, 85, 86, 140, 141.

The Commission finds and reports that if the figures in testimony relating to revenue from New Orleans traffic to Atlanta and to La Grange are correct, appellees would, by increasing rates from New Orleans to Atlanta so as to make them as high as the present rates from New Orleans to La Grange, lose $13,470.19 more or less in a given year, provided such action was taken without the concurrence of the competing lines to Atlanta; because shippers would doubtless then choose the cheaper route.

Trans., pp. 43, 44.

See also Trans., p. 103.

The Auditor of the Atlanta & West Point Railroad, and of the Western Railway of Alabama, testifies that if the rates on all interstate freight to and from La Grange were so adjusted as not to exceed the rates to and from either of the four competitive points through which the traffic passes, said line would lose $5,723.28 per annum; which amount represents 37 per cent of the local interstate freight earnings at La Grange. He further testifies that if an adjustment of rates were made on interstate freight to and from all local stations on the line of the Atlanta & West Point Railroad, and Western Railway of Alabama, so that the rates to and from said local stations should not exceed the rates to and from the competitive points through which the traffic

passes, it would result in a decrease in the gross freight earnings of said roads of $63,331.56; which amount represents 41.6 per cent of the total freight earnings to and from local stations. He further testifies that if an adjustment of rates on freight to and from each of the four competitive points on the Atlanta & West Point Railroad, and the Western Railway of Alabama, were made upon the basis of the rates to and from local stations on said roads, it would result in a decrease in the gross freight revenue of said roads of $133,596.24 per annum, by reason of loss of competitive business; which amount represents 24.7 per cent of the total freight earnings of said road.

Trans., pp. 89, 90.

The President of the Atlanta & West Point Railroad, and of the Western Railway of Alabama, testifies that considering those two roads as one line, a reduction of $63,331.66 in the gross earnings, not accompanied by a decrease in the expenses, would reduce the average yearly surplus of the past five years, applicable to dividends, to a point where it would leave only a possible dividend of 2.33 per cent per annum; and that a reduction of $133,596.24 in the gross earnings, not accompanied by a decrease in the expenses, would reduce the average yearly surplus of the last five years, applicable to dividends, to a point where it would leave only a possible dividend of .62 of one per cent per annum.

Trans., p. 98.

Mr. Lutz testifies that the revenue per ton per mile, which the Atlanta & West Point Railroad, and the Western Railway of Alabama, realize for the transportation of the several classes of freight passing from New Orleans to Atlanta, exceeds the additional cost of the movement of said freight.

Trans., p. 107.

IX.

The Circumstances and Conditions which Affect the Transportation of Property from New Orleans to La Grange, Hogansville, Newnan, Palmetto and Fairburn.

The Commission finds and reports that La Grange is a city of 4,000 or 5,000 inhabitants, with thirty or forty business establishments; and that complainant is the only merchant who has seriously attempted to engage in the wholesale trade at that point.

Trans., p. 31.

The Commission finds and reports that for the year ending June 30, 1895, appellees' line carried a total of only 100 tons of freight from New Orleans to La Grange; and of that total, 30 tons consisted of sugar and molasses.

Trans., p. 34.

The Commission finds and reports that the tonnage carried by appellees' line from New Orleans to La Grange for the year ending June 30; 1895, was less than one-sixtieth of the tonnage carried over the same line, during the same period, from New Orleans to Atlanta.

Trans., pp. 40, 41.

Mr. Lutz testifies that the revenue derived by appellees' line for the year ending June 30, 1895, on traffic from New Orleans to La Grange was only $262.70; and that the revenue derived from traffic from New Orleans to Atlanta was about fifty times as much as the revenue derived from traffic from New Orleans to La Grange.

Trans., p. 103.

Mr. Knott testifies that there is no such competition at La Grange as at Atlanta.

Trans., p. 128.

Complainant Calloway testifies that the Macon & Birmingham Railroad, and the Atlanta & West Point Railroad, are the only railroads at La Grange; and that there is no navigable river at that place.

Trans., p. 82.

See also Trans., pp. 356, 357.

Mr. Calloway testifies that the Macon & Birmingham Railroad "does not seem to be a competitive line;" and that it "has never been acknowledged to be a competitive line."

Trans., p. 80.

Mr. Calloway further testifies that "the Macon & Birmingham has always been cut off. They have no connection with anything."

Trans., p. 83.

Mr. Lutz testifies that the Macon & Birmingham Railroad runs from La Grange to Sofkee, a distance of 97 miles; and that the distance from Sofkee to Macon over the Georgia Southern & Florida Railroad is 8 miles.

Trans., p. 357.

Poor's Manual shows that the Macon & Birmingham Railroad has only four locomotives, and 192 freight cars.

It shows that for the year ending June 30, 1897:

The Gross Earnings of that road were..	$61,970 00
Its Operating Expenses were.....	83,057 00
Its Deficit from Operations was.....	$21,087 00

Trans., p. 257.

Mr. Lutz specifies five through routes that might be formed from New Orleans to La Grange by using the Macon & Birmingham Railroad as a part of each of said routes, and without using any part of appellees' lines to form either of said routes. He testifies, however, that it would be necessary to use either the Southern Railway, or the Central Railway of Georgia, in order to form any one of said routes.

Trans., pp. 357, 358.

He states two reasons why the Southern Railway would not be willing to accept its proportion of the same through rate on traffic from New Orleans destined to La Grange, as it, and its connections, now charge on traffic from New Orleans destined to Atlanta.

First: The rate per ton per mile of the Southern Railway would be less on traffic from New Orleans to La Grange than it is on traffic from New Orleans to Atlanta.

Second: The rate of the Southern Railway and its connections from New Orleans to La Grange would be less than the rates now charged by them from New Orleans to local stations of the Southern Railway, which are nearer than La Grange is to New Orleans.

Trans., p. 358.

He states that the reason why the Central Railway of Georgia would not be willing to accept its proportion of the same through rate on traffic from New Orleans destined to La Grange as it, and its connections, now charge on traffic from New Orleans destined to Atlanta, is that the rate charged by the Central of Georgia Railway, and its connections, from New Orleans to La Grange would be less than the rates now charged by them from New

Orleans to local stations of the Central Railway of Georgia, which are nearer than La Grange is to New Orleans.

Trans., pp. 358, 359.

The Commission finds and reports that the appellees, instead of hauling La Grange freight through in the trains used for Atlanta traffic from Montgomery, carry such freight by local service from Montgomery, at which point new trains are made up for all traffic destined to points on the "Atlanta & West Point-Western of Alabama System," and the rehandling of La Grange freight at Montgomery is incidental to the transportation method of that system.

Trans., p. 42.

The Commission finds and reports that cars, engines, and crews engaged in hauling New Orleans freight from Montgomery to La Grange are also engaged in hauling such and other freight to other stations; in hauling freight between local stations; and in hauling freight shipped locally from Montgomery. Such local service is also employed in transporting freight from Atlanta to points on this system, and in doing generally the local business of the line.

Trans., p. 42.

The Commission finds and reports that carrying "New Orleans-La Grange" freight on local trains relieves the Atlanta & West Point Railroad from the necessity of stopping through trains carrying traffic destined to Atlanta and various points beyond, which traffic is shipped from New Orleans and other points, via Montgomery, over that part of appellees' through line.

Trans., p. 46.

The Commission finds and reports that it is probably true that the Atlanta & West Point Railroad can most cheaply transport the present through tonnage from New Orleans to La Grange, amounting to only 100 tons for a given year, by its separate local trains from Montgomery to La Grange and other local stations.

Trans., p. 46.

The Commission finds and reports that it is testified that New Orleans freight destined to La Grange is generally in less than car loads, and is transferred at Montgomery, being checked out from the car to the platform, and then put into a car to be hauled by the local freight train from Montgomery to La Grange, and that altogether it may be handled from five to a dozen times; that transporting New Orleans traffic to La Grange is done at three times the expense incurred by the carrier in moving New Orleans freight to Atlanta.

Trans., p. 41.

See also Trans., p. 108.

Mr. Knott testifies that "we" have had an investigation made as to the cost of handling freight on way-freight trains at intermediate points as compared with through freights, and find the difference to be from seven to ten times as great on the way-trains.

Trans., pp. 132, 133.

X.

How Rates are Made from New Orleans to Atlanta.

The Commission finds and reports that competition at Atlanta has been active for many years, and during that period the carriers have indulged in a number of rate wars, whereby rates affected from points of shipment to Atlanta, and other principal points in the South, were, for the time being, made abnormally low.

Trans., p. 32.

Mr. Lutz testifies that "competition makes the rate to Atlanta;" that competition from Eastern markets will naturally make the rates from New Orleans; and that on the same class of goods the appellees have to make a similar rate, in order to allow New Orleans to compete.

Trans., pp. 109, 359, 360.

Mr. Knott testifies that there is actual competition, and to a very large extent, between such markets as Boston, New York, Philadelphia, Baltimore, Cincinnati, Louisville, and New Orleans, for the sale of the various classes of freight in the Atlanta market; and that if the appellee railroads should increase the rate on the various classes of freight from New Orleans to Atlanta, so that they would be the same as the rates from New Orleans to La Grange, the effect would be to divert such traffic as is now shipped from New Orleans, and turn it to Baltimore, Cincinnati, and Louisville, or to other markets which compete with New Orleans; that it would also divert the traffic from the lines which run from New Orleans to Atlanta, and turn it to lines which run from other competing markets to Atlanta; or, in other words, unless there should be a corresponding advance in rates from Baltimore, Louisville, and Cincinnati, an advance

in rates from New Orleans would divert the traffic from New Orleans to Baltimore, Louisville, and Cincinnati.

Trans., pp. 125, 133, 134.

Mr. Knott testifies that if the various rail lines which operate between New Orleans and Atlanta could secure an agreement among themselves to advance the rates from New Orleans to Atlanta, so as to make them as high as the rates from New Orleans to intermediate points, the first effect would be to stop the movement of traffic between New Orleans and Atlanta. And even if those lines could secure an agreement with the lines which run from Louisville, Cincinnati, Chicago, and St. Louis, to increase the rates from those cities to Atlanta, so as to make them as high as the increased rates from New Orleans to Atlanta, it would have the effect to divert traffic to the Eastern cities; not only from New Orleans, but also from Louisville, Cincinnati, Chicago and St. Louis. He testifies that it would be impossible to induce the Eastern all-rail lines to increase their rates from Boston, New York, Philadelphia, and Baltimore, so as to make them as high as the increased rates from New Orleans; because the steamships working from Boston, New York, Philadelphia, and Baltimore to Brunswick, Savannah, and Charleston are at liberty to make any rates they please; and those steamships would be glad to get the business not only from Baltimore, but from other points. *It follows therefore that the railroads could not change the rates to Atlanta.* Cincinnati, Louisville and New Orleans might retire from the business; but Atlanta would still have access to markets regardless of what rates the Atlanta & West Point Railroad might make to Atlanta.

Trans., p. 134.

Mr. Knott testifies that there is a certain relation for making rates which exists between the rates charged from Boston, New York, Philadelphia, and Baltimore to Atlanta, and the rates which are charged from Louisville, Cincinnati, and other Ohio River points, to Atlanta.

The rates from Philadelphia, New York, and Boston are the same from each of those points to Atlanta. The rate from Baltimore to Atlanta is less than the rate from Philadelphia. That adjustment as between the Eastern cities is brought about by the fact that the different steamship lines competing actively with each other from Philadelphia, New York, and Boston make the same rates to the South Atlantic ports to which they sail, whichever port that may be; say, Savannah, for instance; and of course that will make a uniform rate from those three Eastern cities, via Savannah, to Atlanta or Macon, or to some other interior Georgia point. The steamers sailing from Baltimore make a somewhat lower rate to the South Atlantic ports than the rate from Boston, New York, or Philadelphia to the same port.

The relation established as between the rates from Baltimore, and the rates from Cincinnati and Louisville, to Atlanta, grew out of the conditions which required that there should be some understanding between competing lines as to the rates on similar kinds of traffic from different and competing points of shipment. The necessity for that has existed ever since there has been competition in the carriage of through shipments of similar kinds of freight from the East, and from the West, into the South. That competition began almost immediately after the war, when through lines for handling freight between (from ?) Boston points began to be inaugurated. The steamers running from the different ports of Baltimore, Philadelphia, New York, and Boston to the different South Atlantic ports began to issue through rates, and through bills of lading, to interior Southern points, in connection with rail lines extending from Savannah, Brunswick, and Charleston to these points. And in the same way, the rail lines extending from the Ohio River into the South, from Louisville or Evansville, began to issue through rates, and through bills of lading, from those points, to points in Georgia, Atlanta for instance, and to solicit from their connections beyond Louisville, Evansville and Cincinnati, traffic destined to Atlanta. As

the routes which led from Chicago or from Indianapolis, for instance, to Baltimore and to New York, were also competing for business from those points destined to Atlanta, Macon, or Augusta, it followed that lines which were competing for the same traffic, originating at the same point (which latter lines proposed to carry the traffic down across the Ohio River through Nashville and Chattanooga into Atlanta and Macon), had to have some kind of an understanding as to what rates were to be quoted by the different routes; and that understanding was arrived at through conferences of traffic officials, and through rate wars, and through arbitration, and sometimes through traffic agreements, or associations.

There is also a certain relation between the rates from such points as Jeffersonville, Evansville, Memphis, Vicksburg, and New Orleans to Atlanta, and the rates that obtain from Cincinnati and Louisville to Atlanta. This relation of rates was also rendered necessary because of the conditions which required that there should be some understanding as between the lines coming from the East, and the lines coming from the West, into Atlanta, as to what rates should be charged on the same articles shipped from different competing markets. It was also necessary that there should be some understanding as to what the rates should be from Western points as related one to the other, on articles of the same kind, shipped to a common point of destination such as Atlanta; and the agreement in that respect was reached through the same process as the agreement with regard to Eastern rates; that is, there were contentions and rate wars, and then agreement, and then arbitration. The present relations of rates as between Louisville, Cincinnati, Evansville, and Cairo, and Mississippi River points such as Memphis, Huntington, Vicksburg, and New Orleans, has been in effect for more than ten years. The present basis was fixed first by Mr. James R. Ogden, who sat as arbitrator in March, 1886, and established a basis of rates that should obtain in making up tariffs from Cin-

cinnati, Louisville, Evansville, Henderson, Cairo, Memphis, Huntington, Vicksburg, and New Orleans to Chattanooga, Atlanta, Macon, Birmingham, Montgomery, and a large territory south of the Ohio River, and east of the Mississippi. An appeal was taken from Mr. Ogden's decision to the late Hon. Thomas M. Cooley. Judge Cooley reviewed Mr. Ogden's decision; and after arguments submitted by the lines in interest, rendered his decision in writing on May 29, 1886. He made some changes in Mr. Ogden's basis of rates; but taken as a whole, he confirmed it.

Trans., pp. 121, 122, 123, 124, 205 to 216.

The Commission finds and reports that the relative rates to Atlanta have been the subject of arbitration and agreement between interested lines at different times during the last twelve or more years; and the basis so established has been substantially returned to by the carriers upon cessation of the rate wars which have prevailed during that period. The Commission also reports that the all-rail rates from the East,—New York, Philadelphia, Boston, and Baltimore,—are made with reference to rates in force via the sea and rail lines from those points to Atlanta.

Trans., p. 32.

The Commission finds and reports that "the normal long established relation of rates to Atlanta," from New York, Philadelphia, Boston, Baltimore, Cincinnati, and Louisville, is as indicated by the following statement of rates, in cents per hundred pounds, on first-class traffic:

New York, Philadelphia, and Boston, all-rail	$1 26
Baltimore, all rail	1 19
New York, Philadelphia, and Boston, sea and rail	1 14
Baltimore, sea and rail	1 07
Cincinnati, all rail	1 07

Louisville, all rail..... $1 07
New Orleans, all rail..... 1 03
Trans., p. 32.

It will be noticed that the first-class rate to Atlanta, whether by all rail or by sea and rail, is the same from Boston, as from New York or Philadelphia; that the first-class rate from Baltimore to Atlanta, whether by all rail or by sea and rail, is 7 cents less than the rate from Boston, New York, and Philadelphia; that the first-class rate, sea and rail, from Baltimore is the same as the all-rail rate from Cincinnati and Louisville; and that the first-class rate, all rail, from New Orleans to Atlanta, is 4 cents less than the sea and rail rate from Baltimore; and 4 cents less than the all-rail rates from Cincinnati and Louisville.

The Commission finds and reports that the rates from Cincinnati and Louisville to Atlanta are the same on numbered classes as the sea and rail rates from Baltimore; but considerably lower on the lettered classes; and that class rates from New Orleans to Atlanta are 4 cents less than from Cincinnati and Louisville.

Trans., p. 33.

There is also a certain relation or basis for making rates to Montgomery, Ala.

The Commission finds and reports that "the general relation of rates to Montgomery, Ala., also established by general agreement among the lines interested," is as indicated by the following statement of rates, per hundred pounds, on first-class traffic:

New York and Boston, all rail..... $1 26
Philadelphia, all rail..... 1 20
Baltimore, all rail..... 1 18
New York and Boston, sea and rail 1 14

Philadelphia, sea and rail	$1 08
Baltimore, sea and rail	1 06
Cincinnati, all rail	1 08
Louisville, all rail	98
New Orleans, all rail	89

Trans., p. 33.

By comparing "the relation of rates to Atlanta" with "the relation of rates to Montgomery," as set forth above, it will be seen that the first-class rate, whether by all rail, or by sea and rail, from New York and Boston, is the same to Montgomery as to Atlanta; that the first-class rate, whether by all rail, or sea and rail, from Philadelphia, is 6 cents less to Montgomery than to Atlanta; that the first class rate whether by all-rail or by sea and rail from Baltimore is 1 cent less to Montgomery than to Atlanta; that the first-class rate from Cincinnati to Atlanta is 1 cent less than to Montgomery; that the first-class rate from Louisville is 9 cents less to Montgomery than to Atlanta; and that the first class rate from New Orleans is 14 cents less to Montgomery than to Atlanta.

Mr. Knott testifies that if the rates from New Orleans to Atlanta were increased, and no corresponding increase were made in the rates from New Orleans to Montgomery, the effect would be to divert traffic from Atlanta to Montgomery; unless Atlanta could be supplied from some other market.

Trans., p. 126.

Mr. Knott testifies that the all-rail rates between New Orleans and Montgomery cannot be increased; because they are as high as can be obtained in competition with boats from New Orleans to Mobile, and boats on the Alabama River, plying between Mobile and Montgomery. He testifies that during the boating season it is of almost daily occurrence to have freight shipped

from New Orleans to Mobile, paying the local to Mobile, and then paying the boat rate from Mobile to Montgomery; thereby getting a somewhat lower rate than the direct all-rail rate from New Orleans to Montgomery. He testifies that it is entirely practicable for Montgomery merchants to secure their freights at the present rates, or at rates lower than the present rates, if an attempt were made to advance the rates from New Orleans to Montgomery by the all-rail lines.

Trans., p. 126.

Mr. Lutz testifies that were it not for competition, especially from the East, higher rates might be reasonably charged from New Orleans to Atlanta.

Trans., pp. 359, 360.

Mr. Knott testifies that the rates from New Orleans to Atlanta would be at least as high as the rates from New Orleans to La Grange, Hogansville, Newnan, Palmetto, and Fairburn, "if competition had not pulled down the rates at Atlanta."

Trans., p. 119.

XI.

How Rates are Made from New Orleans to La Grange, Hogansville, Newnan, Palmetto, and Fairburn.

The Commission finds and reports that through rates from New Orleans to La Grange, Hogansville, Newnan, Palmetto, and Fairburn "are made by a combination of the joint rate (from New Orleans) to Atlanta, and the local rate of the Atlanta & West Point Railroad Company back over the same line to destination;" etc.

See also Trans., p. 116, 117.

The Commission finds and reports that La Grange rates (from New Orleans) are, with a single exception, combinations of rates to and from Atlanta. The exception is class H, which is based on Montgomery.

Trans., p. 31.

See also, Trans., pp. 369, 370.

The reason why the rate on class H is an exception, and is based on Montgomery, is, that rates from New Orleans, from Ohio River points, and from Memphis, etc., to Montgomery, are largely affected by water competition on the Alabama River; and the rate on class H (which is whisky, wine, etc., in barrels), from New Orleans to Montgomery was so adjusted as to prevent that class of articles from being shipped from New Orleans to Mobile at the current rate, and then shipped from Mobile to Montgomery by river.

Trans., pp. 371, 372.

The Commission finds and reports that the rates to La Grange from Boston, New York, Philadelphia, Baltimore, Cincinnati, and Louisville are the rates from Boston, New York, etc., to Atlanta, added to the local from Atlanta to La Grange.

Trans., p. 32.

The Commission finds and reports "that changes in rate conditions at Atlanta have ordinarily worked similar changes in rates to La Grange. Thus a first-class rate of $1.43 on traffic from New Orleans to La Grange, made by adding the $1.03 rate to Atlanta and the 40 cent local from Atlanta to La Grange, would be reduced to 80 cents, if, during a rate war, the first-class rate from New Orleans to Atlanta should be as low as 40 cents."

Trans., p. 32.

Mr. Knott testifies that the rates from New Orleans to La Grange, Hogansville, Newnan, Palmetto, and Fairburn would,

if other conditions permitted, be made on the basis of the rates from New Orleans to Montgomery, added to the rates from Montgomery to those points.

Trans., p. 118.

He testifies, however, that rates constructed upon that basis would be higher than those which are now charged by the defendants.

Trans., pp. 118, 119.

The reason why rates to those points from New Orleans are not based on Montgomery, is, as explained by Mr. Knott, "because of the effect of competition enjoyed, respectively, at each one of those stations; that is, the effect of competition which has pulled down the rates at Atlanta; the conditions at Atlanta not permitting the rates from New Orleans to that point to be made the maximum that they would be, if distance alone controlled the Atlanta & West Point, and the Western Railway, and the Louisville & Nashville, in making the rates; and the rate at Atlanta being reduced through the effect of these conditions at Atlanta, the benefit of those reductions in the Atlanta rate extends back over the Atlanta & West Point Railroad, so that the rates to Fairburn, and Palmetto, and Newnan, and La Grange, and Hogansville, are lower than they would be, except for the low rate in effect from New Orleans to Atlanta."

Trans., p. 119.

Mr. Knott testifies that the rates from New Orleans to La Grange are less than a combination of the rates from New Orleans to Montgomery, added to the rates from Montgomery to La Grange.

Trans., p. 117.

The Commission finds and reports that "the local rates in either direction between points on the Atlanta & West Point

Railroad are substantially in accordance with the maximum distance rates allowed by the Georgia Railroad Commission," etc.

Trans., p. 28.

See also Trans., pp. 105, 370.

Mr. Knott testifies that if distance controlled, the rates from New Orleans to Hogansville, Newnan, Palmetto, and Fairburn would be higher, or certainly not lower, than the rates from New Orleans to La Grange.

Trans., p. 118.

Table A, on page 14 of appellees' answer to the petition filed before the Commission, shows what the rates would be from New Orleans to La Grange, Hogansville, Newnan, Palmetto, and Fairburn, respectively, if it were possible for the appellees to use distance as a controlling factor in making said rates; and said table shows that the rates from New Orleans to Hogansville, Newnan, Palmetto, and Fairburn, would, in each and every instance, be higher on each and every class, than the rates from New Orleans to La Grange.

Trans., p. 11.

Mr. Knott testifies that Table A, referred to above, gives correctly "the sum of the rates from New Orleans to Montgomery, and from Montgomery to each of the points named, at the time the answer was made."

Trans., pp. 118, 119.

Mr. Lutz testifies that the defendants cannot charge more from New Orleans to Palmetto, Fairburn, Newnan, and Hogansville, than a combination of the rates from New Orleans to Atlanta with the local rate from Atlanta to destination, "as shippers would simply ship to Atlanta and ship right back."

Trans., pp. 112, 113.

PART SECOND.

ARGUMENT.

XII.

THE MOST RECENT CASES ON THE QUESTIONS INVOLVED.

Every principle of law involved in the case at bar has been heretofore decided by this Court.

The most recent cases on the subject are

181 U. S., p. 1, E. T. V. & G. Ry. Co. v. I. C. C., decided April 8, 1901.

181 U. S., p. 22, I. C. C. v. Clyde S. S. Co., decided April 8, 1901.

101 Fed. Rep., 779, S. P. Co. v. C. F. & I. Co., decided April 16, 1901.

All three of said cases have been decided since the report and opinion of the Commission in the case at bar was filed; which was on December 31, 1897.

Trans., p. 23.

XIII.

THE PRINCIPLE ESTABLISHED BY THIS COURT.

In the case of E. T. V. & G. Ry. Co. v. I. C. C., 181 U. S., pp. 18 and 19, this Court said:

"In a supposed case when, in the first instance, upon an issue as to a violation of the fourth section of the act, it is conceded

or established that the rates charged to the shorter distance point are just and reasonable in and of themselves, and it is also shown that the lesser rate charged for the longer haul is not wholly unremunerative and has been forced upon the carriers by competition at the longer distance point, it must result that a discrimination springing alone from a disparity in rates cannot be held, in legal effect, to be the voluntary act of the defendant carriers, and as a consequence the provisions of the third section of the act forbidding the making or giving of an undue or unreasonable preference or advantage will not apply.

"The prohibition of the third section, when that section is considered in its proper relation, is directed against unjust discrimination or undue preference arising from the *voluntary* and *wrongful* act of the carriers complained of as having given undue preference, and does not relate to acts *the result of conditions wholly beyond the control of such carriers.* To otherwise construe the statute would involve a departure from its plain language, and would be to confound cause with effect. For, if the preference occasioned in favor of a particular place by competition there gives rise to the right to charge the lesser rate to that point, it cannot be that the availing of this right is the cause of the preference, and especially is this made clear in the case supposed, since it is manifest that forbidding the carrier to meet the competition would not remove the discrimination.

"The only principle by which it is possible to enforce the whole statute is the construction adopted by the previous opinions of this Court; that is, that competition which is real and substantial and exercises a potential influence on rates to a particular point, brings into play the dissimilarity of circumstance and condition provided by the statute, and justifies the lesser charge to the more distant and competitive point than to the nearer and noncompetitive place, and that this right is not destroyed by the mere fact that incidentally the lesser charge to

the competitive point may seemingly give preference to that point, and the greater rate to the noncompetitive point may apparently engender a discrimination against it. We say seemingly on the one hand and apparently on the other, because in the supposed cases the preference is not 'undue' or the discrimination 'unjust.' This is clearly so, when it is considered that the lesser charge upon which both the assumption of preference and discrimination is predicated is sanctioned by the statute, which causes the competition to give rise to the right to make such lesser charge."

The italics are mine.

XIV.

The Application to the Case at Bar of the Principle Established by This Court.

First: I have hereinbefore shown in Section XI, how rates from New Orleans to La Grange are made. And I hereinafter show in Sections XV to XXXI, that said rates are just and reasonable in and of themselves.

Second: I have hereinbefore shown in Section VIII, the circumstances and conditions which affect the transportation of property from New Orleans to Atlanta; and in Section IX, the circumstances and conditions which affect the transportation of property from New Orleans to La Grange, Hogansville, Newnan, Palmetto, and Fairburn. I have shown in Section X, how rates are made from New Orleans to Atlanta; and in Section XI, how rates are made from New Orleans to La Grange, Hogansville, Newnan, Palmetto, and Fairburn. I have shown in said sections that said rates to the longer distance points, viz., Atlanta, Hogansville, Newnan, Palmetto, and Fairburn, have been forced upon the carriers by competition at Atlanta; and that said competition is real and substantial, and exercises a potential influence on said rates.

Third: It is shown in the testimony that the lesser rates charged for the longer haul, from New Orleans to Atlanta, are not wholly unremunerative; *i. e.*, that they pay something more than the cost of transportation of the Atlanta traffic.

Trans., p. 107.

Fourth: The discrimination which exists against La Grange springs alone from a disparity in rates; and the preference occasioned in favor of Atlanta, Hogansville, Newnan, Palmetto, and Fairburn is not the voluntary act of the appellee carriers; but is the result of conditions wholly beyond the control of said carriers.

Fifth: Forbidding the appellees to meet the competition which exists at Atlanta would not remove the discrimination against La Grange.

Sixth: Therefore, though the lesser charge to the competitive point, Atlanta, may "seemingly" give a preference to that point, and the greater rate to the noncompetitive point, La Grange, may "apparently" engender a discrimination against it, such preference in favor of Atlanta is not "undue," and such discrimination against La Grange is not "unjust."

181 U. S., pp. 18, 19, E. T. V. & G. Ry. v. I. C. C.

XV.

The Order of the Commission Concedes in Effect that La Grange's Rates are Reasonable in and of Themselves.

In the case of E. T. V. &. G. Ry. Co. v. I. C. C., 181 U. S., p. 23, this Court said: "A decree which ordered the carrier to desist from charging a greater compensation for the lesser than for the longer haul, would be in no way responsive to the conclusion

that the rate for the lesser distance was unreasonable in and of itself. *Such a decree would in effect authorize the carrier to continue to charge at its election a rate which was in itself unreasonable to the shorter point.*"

In the case at bar, the appellees, under the order made by the Commission, may continue to charge the present rates to La Grange, provided they increase the rates from New Orleans to Atlanta, Fairburn, Palmetto, Newnan and Hogansville, to a point where they will not exceed the rates from New Orleans to La Grange.

Trans., p. 48 to 51.

To authorize the appellees to continue to charge the present La Grange rates, on condition that they secure an increase in the rates from New Orleans to Atlanta, Fairburn, Palmetto, Newnan, and Hogansville, is inconsistent with the theory that the present La Grange rates are unjust or unreasonable in and of themselves.

XVI.

The First Section of the Act to Regulate Commerce, Relates to the Reasonableness of Rates "In and Of Themselves," as Contradistinguished from Rates which Constitute Unjust Discrimination or Undue Preference.

The first section enacts that all charges "shall be reasonable and just."

24 U. S. Stat. at Large, p. 279.

Mr. Justice Brown, in delivering the opinion of the Supreme Court, in the case of I. C. C. v. B. & O. R. R., said:

"A charge may be perfectly reasonable under Section 1, and yet may create an unjust discrimination, or an unreasonable preference, under Sections 2 and 3."

145 U. S., 277, I. C. C. v. B. & O. R. R.

81 Fed. Rep., p. 804, Kinnavey v. Terminal R. Assn.

The words "reasonable and just," as used in the first section, necessarily mean rates that are reasonable and just, *in and of themselves*, as contradistinguished from the rates which are referred to in Sections 2, 3 and 4 of the act.

Section 2 was passed to provide for that class of cases where a difference in rates constitutes an unjust discrimination.

S ction 3 was passed to provide for that class of cases where a difference in rates constitutes an undue preference.

Section 4 was passed to provide for that class of cases where a difference in rates constitutes a greater charge for a shorter than for a longer haul, etc., under substantially similar circumstances and conditions.

Section 1 was passed to provide for that class of cases where the sole question involved is whether a given rate is reasonable and just, *in and of itself*, even though it does not constitute an unjust discrimination, nor an undue preference, nor a greater charge for a shorter than for a longer distance.

The phrase "just and reasonable *in and of themselves*," is used by this Court in its opinion in the case of E. T. V. & G. Ry. Co. v. I. C. C., 181 U. S. pp. 18-19.

XVII.

The Burden of Proof Under the First Section Rests Upon the Appellant.

In the case of Harding v. C. St. P. M. & O. R. Co., decided in 1887, which was one of the earliest cases decided by the Commission, the Commission held that "on a petition charging the exaction of *unreasonable* rates, *the burden of proof is on the petitioner* to sustain the charges by evidence which shows w th reasonable certainty that they are in substance true."

See 1 I. C. Rep., p. 375.

In the case of Brewer & Hanleiter v. Louisville & Nashville Railroad Company, decided in 1897, and which is one of the latest cases decided by the Commission, upon the point, the Commission reiterated the doctrine that the burden of proving that a rate is in and of itself *unreasonable* is upon the complainant.

See 7 I. C. Rep., p. 234.

Counsel for the appellant contended, in the Circuit Court, that as the facts which are necessary to enable the Court to determine the reasonableness of rates are peculiarly within the knowledge of the appellees, the burden of proving those facts ought to be placed upon them.

The contention of counsel is directly antagonistic to the decision of the Commission in the two cases just cited. Counsel ignores the fact that Section 20 of the Act to Regulate Commerce authorizes the Commission to require annual reports from all interstate railroad companies, and to require from them "specific

answers to all questions upon which the Commission may need information." Counsel also ignores the fact that interstate railroad carriers make annual reports to the Commission, showing in detail many of the facts which are proper to be considered in determining the reasonableness of rates; and if any additional facts were desired by the Commission, all that it had to do was to call for them under the twentieth section of the act, or to take the depositions of appellees' officers.

Counsel for the appellants contended, in the Circuit Court, that the appellees recognized that the burden of proof was upon them, by taking the testimony of certain expert witnesses, to the effect that, in their opinion, the rates to La Grange are just and reasonable. The appellees, knowing that the report and opinion of the Commission would be relied upon as prima facie evidence of the facts, took their testimony in the Circuit Court in advance of any testimony that was taken by the Commission; and not knowing what testimony the Commission would take in that Court upon the question as to the reasonableness of the rates to La Grange, the appellees took said expert testimony; not because they supposed that the burden of proof was upon them, under the first section, but to anticipate any proof upon the subject that the Commission might afterwards take.

The question as to what is a reasonable and just rate to be charged for the transportation of a given class of freight, for a given distance, over a given railroad, is one of great difficulty, even when considered by the most competent experts. Railroad traffic managers, and freight agents, are generally men of a high order of intelligence, who have devoted many years of their lives to the adjustment of rates; and when they have, upon mature consideration, arrived at the conclusion that a given rate is reasonable and just, it may, even upon that ground alone, be fairly

presumed, especially in the absence of proof to the contrary, that such conclusion is correct.

I respectfully submit that where a basis of rates, such as obtains from New Orleans to La Grange, has been publicly acquiesced in by shippers and consignees for a period of twelve or more years, the presumption becomes quite strong that such basis is reasonable and just.

XVIII.

The Question as to What is a Reasonable Rate is a Very Difficult One.

In the case of Ames v. U. P. Ry. Co., Mr. Justice Brewer used this language:

"But the grave question still remains, Are the rates prescribed in this act as the maximum over which the railroad companies may not go, unreasonable, and so unreasonable as to justify the Court in staying its operation? *No more difficult problem can be presented than this.* There are so many matters which enter into it, and which must be taken into consideration before a satisfactory answer can be reached."

64 Fed. Rep., 173, Ames v. U. P. Ry. Co.

In the same case, reported under the style of Smyth et al. vs. Ames (known as the "Nebraska Freight Rate Case"), this Court said: "How such compensation may be ascertained, and what are the necessary elements in such an inquiry, will always be *an embarrassing question.*"

169 U. S., p. 546.

176 U. S., p. 172, C. M. & St. P. Ry. Co. v. Tompkins.

In the case of U. S. v. Freight Association, 166 U. S., p. 331, Mr. Justice Peckham used this language:

"What is a proper standard by which to judge the fact of reasonable rates? Must the rates be so high as to enable the return *for the whole business* done to amount to a sum sufficient to afford the shareholder a fair and reasonable profit upon his investment? If so, *what is a fair and reasonable profit?* That depends sometimes upon *the risk incurred*, and the rate itself differs in different localities; which is the one to which reference is to be made as the standard? Or is the reasonableness of the profit to be limited to *a fair return upon the capital that would have been sufficient to build and equip the road, if honestly expended?* Or is still another standard to be created, and the reasonableness of the charges tried by *the cost of the carriage* of the article, and a reasonable profit allowed on that? And in such case would *contribution to a sinking fund to make repairs upon the roadbed and renewal of cars*, etc., be assumed as a proper item? Or is the reasonableness of the charge to be tested by reference to the *charges for the transportation of the same kind of property made by other roads similarly situated?* If the latter, a combination among such roads as to rates would, of course, furnish no means of answering the question. It is quite apparent, therefore, that *it is exceedingly difficult to formulate even the terms of the rule itself which should govern in the matter of determining what would be reasonable rates for transportation.*"

The italics are mine.

166 U. S., pp. 331, 332.

See also 81 Fed. Rep., pp. 551, 552, Van Patten v. C. M. & St. P. Ry. Co.

In the case of Smyth et al. v. Ames et al., Mr. Justice Harlan said:

"We hold, however, that the basis of all calculations as to reasonableness of rates to be charged by a corporation maintaining a highway under legislative sanction must be *the fair value* of the property being used by it for the convenience of the public. And in order to ascertain that value, *the original cost of construction*, the amount expended in *permanent improvements*, the *amount and value of its bonds and stock*, the *present, as compared with the original, cost of construction*, the probable *earning capacity* of the property under particular rates prescribed by statute, and the sum required to meet *operating expenses*, are all matters for consideration, and are given such weight as may be just and right in each case. We do not say that there may not be other matters to be regarded in estimating the value of the property. What the company is entitled to ask is a fair return upon the value of that which it employs for the public convenience."

Smyth et al. v. Ames et al., 169 U. S., pp. 546, 547.

In the cases which have involved the question as to the *reasonableness* of rates, "labyrinths of tables, figures, and estimates" were presented in the testimony, discussed by counsel in their briefs, and considered by the Court with the closest scrutiny and greatest patience, as will be seen by reference to the opinions in:

64 Fed. Rep., pp. 179 to 194, Ames v. U. P. Ry. Co.

78 Fed. Rep., pp. 263-275, Southern Pacific Co. v. Board of R. R. Comrs.

154 U. S., pp. 402–413, Reagan v. Farmers' Loan & Trust Co.

169 U. S., p. 466, Smyth et al. v. Ames et al.

In the case at bar, there will not be found either in the testimony taken before the Commission, or in the testimony taken in the Circuit Court, any evidence of many of the facts sug-

gested by Justices Peckham and Harlan, as proper to be considered in determining what are reasonable rates. For instance, there was no evidence as to the *original* cost of construction, or of the "value of the bonds and stocks," etc., of any of the appellee roads.

I submit, therefore, that the evidence is wholly insufficient to enable either the Commission, or this Court, to intelligently decide that the rates to La Grange are unreasonably high in and of themselves.

XIX.

The Appellees are Entitled to a Fair Return Upon the Value of That Which They Employ for the Public Convenience.

In the case of Ames v. U. P. Ry. Co., Mr. Justice Brewer said:

"The foundation of the idea of reasonableness is justice. That which is unjust cannot be reasonable; and when the strong arm of the Legislature is laid upon property invested in railroad transportation, it must be so laid as to do justice to such investors. There can be no justice in that which works to such investors a practical destruction of their property, thus invested. It must always be borne in mind that property put into railroad transportation is put there permanently. It cannot be withdrawn at the pleasure of the investors. Railroads are not like stages or steamboats, which, if furnishing no profit at one place and under one prescribed rate of transportation, can be taken elsewhere, and put to use at other places and under other circumstances.

The railroad must stay, and, as a permanent investment, its value to its owners may not be destroyed. The protection of property implies the protection of its value."

64 Fed. Rep., p. 176, Ames v. U. P. Ry. Co.

176 U. S., p. 167, C. M. & St. P. R. R. Co. v. Tompkins.

"Justice demands that every one should receive some compensation for the use of his money or property, if it be possible without prejudice to the rights of others."

154 U. S., 412, Reagan v. Farmers' L. & T. Co.

"What the company is entitled to ask is a fair return upon the value of that which it employs for the public convenience."

Smyth et al. v. Ames et al., 169 U. S., p. 547.

That which the appellees employ "for the public convenience" in this case is:

First: A portion of the Louisville & Nashville Railroad extending from New Orleans to Montgomery, a distance of 320 miles.

Second: A portion of the Western Railway of Alabama extending from Montgomery to West Point, a distance of 89 miles.

Third: A portion of the Atlanta & West Point Railroad extending from West Point to La Grange, a distance of 16 miles.

Trans., p. 35.

The Commission has failed to prove the value of either one of said portions of railroads; and therefore it has failed to prove that the rates charged from New Orleans to La Grange yield more than "a fair return upon the value of that which" appellees employ "for the public convenience."

XX.

The Schedule of Rates, as a Whole, Must Control.

In order to ascertain whether a railroad company has, during any given period, received any compensation for the use of its property, it is necessary to know the results of its operations *as a whole*. The result of its operations as to any particular article, as coal, pig iron, etc., is of no value; because, though it may have carried those articles at or even under cost, the other articles carried by it may have yielded more than a reasonable profit upon the entire investment.

And so, though it may have carried some articles at rates which, looked at by themselves, would appear to be excessive, yet when considered in connection with the rates charged on the entire volume of traffic carried by it, will be found to be insufficient to yield a fair return upon the value of the road.

In the case of the Chicago & N. W. Ry. v. Dey, Mr. Justice Brewer said:

"Coming now to the question of the schedule as presented, I remark that the schedule, *as a whole*, must control, and its validity or invalidity *does not depend upon the sufficiency or insufficiency of the rates for any few particular subjects of transportation.*"

35 Fed. Rep., p. 881, C. & N. W. Ry. Co. v. Dey.

In the case of Chicago, etc., Ry. Co. v. Minnesota, Mr. Justice Miller, in a concurring opinion, said:

"That the proper, if not the only, mode of judicial relief against the tariff of rates established by the Legislature or by its Commission, is by a bill in chancery asserting its unreasonable character and its conflict with the Constitution of the United States, and asking a decree of court forbidding the corporation from exacting such fares as excessive, or establishing its right to collect the rate as being within the limit of a just compensation for the service rendered."

"That until this is done, *it is not competent for each individual having dealings with the carrying corporation, or for the corporation with regard to each individual who demands its services, to raise a contest in the courts over the question which ought to be settled in this general and conclusive method.*"

134 U. S., p. 460, Chicago, etc., Ry. Co. v. Minnesota.

In its Eleventh Annual Report, the Commission states that the classifications now in use in this country embrace from 5,000 to 7,000 items.

11 Ann. Rep., I. C. C. (1897), p. 66.

How would it be possible for any tribunal to ascertain what would be a reasonable rate upon one of those items; as, for instance, coal, or pig iron, without taking into consideration any of the remaining five or seven thousand articles?

In the case at bar a single individual, Fuller E. Calloway, seeks "to raise a contest in the courts over the question" as to what are reasonable rates upon the numbered and lettered classes of freight from New Orleans to La Grange.

He does not seek to investigate the reasonableness of the freight rates charged by appellees from any station except New Orleans, nor to any station except La Grange.

The Commission finds and reports that, for the year ending June 30, 1895, the appellees carried from New Orleans to La Grange only 100 tons of freight; which freight was carried from West Point to La Grange by the Atlanta & West Point Railroad.

Trans., p. 34.

During the year ending June 30, 1895, the Atlanta & West Point Railroad carried between its various stations, 214,905 tons of freight.

Trans., pp. 96, 156, 157.

How is it possible for either the Commission or the Court to ascertain what are reasonable and just rates upon the 100 tons of freight carried from New Orleans to La Grange, without taking into consideration the rates that the Atlanta & West Point Railroad was compelled to accept upon the remainder of the 214,905 tons carried by it during the same year?

This Court is asked to single out the traffic which originates at New Orleans alone, and which is destined to La Grange alone, and to decide what are reasonable and just rates on that comparatively insignificant amount of traffic; without regard to what may have been the result of the operations of either of the appellee companies under their schedules, "taken as a whole;" and even without regard to what may have been the result of the operations of those portions of their respective roads which compose the line from New Orleans to La Grange, under the schedules of that line, "taken as a whole."

XXI.

The Rates from New Orleans to La Grange are Lower than Can be Obtained by Any Means of Land Transportation, Other than Rail Transportation.

The distance from New Orleans to La Grange via the appellees' line is 425 miles.

Trans., p. 35.

The appellees' rates for transporting freight from New Orleans to La Grange, a distance of 425 miles, are the following in cents per 100 pounds, except as to class F, which is in cents per barrel of 200 pounds:

Classes	1	2	3	4	5	6	A	B	C	D	E	H	F
	143	124	109	93	74	59	41	48	33.5	29	66	74	50

It will be noticed that even if the tonnage carried from New Orleans to La Grange were equally divided between the thirteen classes, the average rate would be less than 73.3 cents per 100 pounds.

It appears, however, that for the year ending June 30, 1895, the total amount of freight carried from New Orleans to La Grange was only 100 tons; that none of said freight belonged to classes 1, 2, or 3, which classes carry the three highest rates; that only seven tons belonged to class 4; and only six tons belonged to class 6; and that the remainder of the tonnage was carried at "commodity rates." Of the total 100 tons carried

from New Orleans to La Grange, 17 tons consisted of molasses; 13 tons consisted of sugar; and three tons consisted of rice.

Trans., pp. 90, 91, 142.

The rate from New Orleans to La Grange on sugar is 38 cents; on molasses, 37 cents; and on rice 34½ cents per hundred pounds.

Trans., p. 282.

It will be noticed that none of the freight carried from New Orleans to La Grange paid more than the fourth-class rate, which is 93 cents per hundred pounds; and that 33-100 of said freight (consisting of molasses, sugar, and rice) was carried for less than 38 cents per hundred pounds.

But assume, for the sake of argument, that the tonnage carried from New Orleans to La Grange is equally divided between the thirteen classes, and that the average rate is therefore something less than 73.3 cents, I insist, with the utmost confidence, that such a rate is not only reasonable and just for transporting 100 pounds of freight a distance of 425 miles, but that it is an exceedingly low rate. It is certainly a lower rate than can be obtained by any means of transportation, except rail.

Trans., p. 385.

I feel quite sure that history will not record an instance where 100 pounds of freight has been transported a distance of 425 miles for an average rate of less than 73.3 cents by any means of land transportation, other than rail.

How can it be affirmed with any degree of fairness that a rail rate is unreasonably high, when it is shown to be less than ever has been obtained by any other means of land transportation?

Freight is generally transported by railroads a given distance

in less time, and in better condition, than by any other means of transportation; and why should railroads be required to render this superior service at less rates than are charged by any other means of land conveyance?

It is contended by counsel for appellant that it is unfair to compare railroad rates with wagon rates, for the following, among other reasons:

1. Where a wagon or cart carries one ton of freight, a railroad carries thousands.

2. Where a wagon or cart carries freight one mile, a railroad carries it hundreds, or thousands, of miles.

3. Wagons and carts have no monopoly of transportation over a particular roadway.

As to the first and second reasons, it is true that a railroad train, or even a single freight car, can carry a much larger quantity of freight than can be carried in a wagon or cart. It is also true that railroads, by joining in through rates and through routes, can carry freight for much greater distances than it is usually carried in wagons or carts. But the fact that railroads can carry larger quantities of freight, for greater distances, than can be done by wagon or cart, simply demonstrates the superior service which railroads can and do render to the public. It furnishes no reason for holding that because they can, and do, render a superior service, they shall render it for a less rate than is charged for a vastly inferior service.

If it be said that as railroads can carry larger quantities of freight, and for greater distances within a given time, it is evidence that they can afford to carry at a less rate per ton per mile than the rates charged by wagon, the answer is two-fold:

First: The financial result of the operations of the railroads in the United States since the inauguration of the railroad system, is one of almost universal bankruptcy. It is extremely doubtful whether 500 miles of connected railway can be found in the United States some part of which has not, at some time or other, gone through bankruptcy.

No one can affirm with any degree of confidence what is the relative cost of railroad transportation, as compared with the cost of wagon transportation.

Second: But whether railroads can afford to do so, or not, it is conceded that they do carry not only at very much less rates per ton per mile, than rates charged by wagon; but at rates so much less than wagon rates as to have driven wagons out of competition in all cases except where the transportation is for relatively short distances.

As to the suggestion that wagons and carts have no monopoly of transportation over a particular roadway, it is sufficient to say that, on the other hand, they are entirely relieved of the expense of constructing roadways, and contribute but little toward their maintenance.

As to the suggestion that railroads have a monopoly of transportation over their roadways, it is sufficient to say that they are subjected by law to severe government supervision and control, with a view to preventing them from using their monopoly to the detriment of the public. They are strictly prohibited from making any unjust discrimination, or giving any undue preference, or charging any unreasonable compensation.

The question, however, as to what is a reasonable compensation for a railroad to charge in a given case has been left by the

law to the final determination of the courts; and in considering that question, there is nothing in the law to prevent the courts from comparing rail rates with rates charged by wagon, by pack mules, or by any other means of land transportation.

XXII.

The Appellees' Rates from New Orleans to La Grange are as Low as are Charged by Any Other Rail Line Operating Between Those Points.

It is by no means necessary for La Grange merchants to use the appellees' line in shipping from New Orleans to La Grange.

The Louisville & Nashville Railroad, the New Orleans & Northeastern Railroad, and the Illinois Central Railroad are initial carriers at New Orleans. They and their connections form some ten or twelve different routes which compete for traffic moving between New Orleans and Atlanta. Merchants at La Grange can elect between the Louisville & Nashville Railroad and its connections; the New Orleans & Northeastern Railroad and its connections; and the Illinois Central Railroad and its connections; and the rates charged by the appellees' line from New Orleans to La Grange are as low as those charged by any of the competing routes between the same points.

XXIII.

The Appellees' Rates from New Orleans to La Grange are as Low as the Rates Charged by Railroads from Memphis to La Grange.

Mr. Biles testifies that the appellees' rates from New Orleans to La Grange are practically identical with the rates from Memphis, from which point the distance is practically the same.

Trans., p. 391.

XXIV.

The Appellees' Rates from New Orleans to La Grange are, as a Rule, Four Cents Per Hundred Pounds Less than Rates Charged by Railroads from Louisville and Other Ohio River Points to La Grange.

Mr. Biles testifies that the appellees' rates from New Orleans to La Grange are, as a rule, 4 cents per hundred pounds less than the rates from Louisville and other Ohio River points (Trans., p. 391); and the Commission finds and reports that the normal, long established relation of rates to Atlanta gives a first-class rate from New Orleans to Atlanta, which is 4 cents per hundred pounds less than the rates from Cincinnati and Louisville.

Trans., pp. 391, 33.

The local rates from Atlanta to La Grange are the same whether traffic destined for La Grange comes to Atlanta from New Orleans, or from Cincinnati, or Louisville.

XXV.

The Appellees' Rates from New Orleans to La Grange are Lower than Rates Charged by Railroads from Baltimore to La Grange.

The Commission finds and reports that the normal, long established, relation of rates to Atlanta, gives a first-class rate from New Orleans to Atlanta, which is 16 cents per 100 pounds lower than the all-rail rate from Baltimore to Atlanta; and 4 cents lower than the sea and rail rate from Baltimore to Atlanta.

Trans, p. 32.

The local rates from Atlanta to La Grange are the same whether traffic destined for La Grange comes to Atlanta from New Orleans, or from Baltimore.

XXVI.

The Appellees' Through Rates from New Orleans to La Grange are Lower than Rates Charged by Railroads from New York, Philadelphia, or Boston to La Grange.

The Commission finds and reports that the normal, long established, relation of rates to Atlanta, gives a first class rate from New Orleans to Atlanta, which is 23 cents per 100 pounds lower than the all-rail rate from New York, Philadelphia, and Boston to Atlanta; and 11 cents lower than the sea and rail rate from New York, Philadelphia, and Boston to Atlanta.

Trans., p. 32.

The local rates from Atlanta to La Grange are the same whether traffic destined for La Grange comes to Atlanta from New Orleans, or from New York, Philadelphia, or Boston.

XXVII.

The Appellees' Rates from New Orleans to La Grange are, as a Rule, Materially Lower than the Sum of the Locals Between Those Points.

The local rates from New Orleans to Mobile; and the local rates from Mobile to Montgomery are stated by Mr. Knott.

Trans., p. 117.

The local rates from Montgomery to West Point, and from West Point to La Grange, are stated by Mr. Lutz.

Trans., pp. 104, 105, 174, 176.

The rates charged by appellees from New Orleans to La Grange are stated by the Commission in its report and opinion.

Trans., p. 35.

The following table shows the sum of the local rates from New Orleans to La Grange, compared with the through rates charged by the appellees from New Orleans to La Grange, and the difference in favor of appellees' through rates:

Classes	1	2	3	4	5	6	A	B	C	D	E	H	F
New Orleans to Mobile	50	37	25	18	15	15	12	15	12.5	10	15	18	25
Mobile to Montgomery	50	40	30	24	20	20	15	20	14	12	24	19	20
Montgomery to West Point	55	47	42	32	26	21	21	23	21	17	29	32	40
West Point to La Grange	20	18	17	13	12	10	10	10	6	5.5	12	13	12.5
Sum of Locals, New Orleans to La Grange	175	142	114	87	73	66	58	68	53.5	44.5	80	82	97.5
Appellees' through rates, New Orleans to La Grange	143	124	109	93	74	59	41	48	33.5	29	66	74	59
Difference in fav'r of Appellees' through rates	32	18	5	-6	-1	7	17	20	20	15.5	14	8	38.5

It will be seen that with the exception of the rates on classes 4 and 5, the appellees' through rates from New Orleans to La Grange are materially lower than the sum of the locals.

There is no legal or moral reason why the Louisville & Nashville Railroad should carry freight for a La Grange merchant from New Orleans to Mobile, for any less rate than it charges a New Orleans merchant for carrying the same kind and quality of freight between the same points. Neither is there any legal or moral reason why the Louisville & Nashville Railroad should carry freight for a La Grange merchant from Mobile to Montgomery, for any less rate than it charges a Mobile merchant for carrying the same kind and quality of freight between the same points. Neither is there any legal or moral reason why the Western Railway of Alabama should carry freight for a La Grange merchant from Montgomery to West Point, for any less rate than it charges a Montgomery merchant for carrying the same kind and quality of freight between the same points. Neither is there any legal or moral reason why the Atlanta & West Point Railroad should carry freight for a La Grange merchant from West Point to La Grange, for any less rate than it charges a West Point merchant for carrying the same kind and quality of freight between the same points. Neither is there any legal or moral reason why the appellees should carry freight for a La Grange merchant from New Orleans to La Grange, for any less than the sum of their local rates; and the only reason why they do so is that competition at Atlanta compels it.

XXVIII.

The Appellees' Through Rates from New Orleans to La Grange are, as a Rule, Materially Lower than the Sum of the Competitive Rates from New Orleans to Montgomery, Added to Rates from Montgomery to West Point Approved by the Alabama Railroad Commission, and Rates from West Point to La Grange Approved by the Georgia Railroad Commission.

The all-rail rates from New Orleans to Montgomery are stated by the Commission in its report and opinion.

Trans., p. 35.

Said rates are made under the stress of competition with boats plying from New Orleans to Mobile, and boats plying the Alabama River from Mobile to Montgomery; said river boats ply from six to ten months during the year, and run sometimes as frequently as three times a week. During the boating season, it is of almost daily occurrence to have freight shipped from New Orleans to Mobile, paying the local rail rates to Mobile, and then paying the local boat rates from Mobile to Montgomery, and thereby getting a somewhat lower rate than the direct all-rail rate. It is entirely practicable for Montgomery merchants to secure their freight at the present rates, or even at lower rates, if an attempt were made to advance the rates from New Orleans to Montgomery by the all-rail lines.

Trans., p. 126.

The rates from Montgomery to West Point are stated by Mr.

Lutz, who says that they have been approved by the Alabama Railroad Commission.

Trans., p. 104.

The rates from West Point to La Grange are stated by Mr. Lutz in Exhibit No. 19 to his deposition before the Commission; and he says that they have been approved by the Georgia Railroad Commission.

Trans., pp. 105, 174, 176.

The appellees' through rates from New Orleans to La Grange are stated by the Commission.

Trans., p. 35.

The following table shows the sum of the competitive rates from New Orleans to Montgomery, added to rates from Montgomery to West Point, approved by the Alabama Railroad Commission, and rates from West Point to La Grange approved by the Georgia Railroad Commission; it also shows the through rates charged by appellees from New Orleans to La Grange and the difference in favor of appellees' through rates.

Classes	1	2	3	4	5	6	A	B	C	D	E	H	F
Rates, New Orleans to Montgomery	88	79	68	55	47	36	24	27	20	16	44	29	32
Rates, Montgomery to West Point	55	47	42	32	26	21	21	23	21	17	29	32	40
Rates, West Point to La Grange	20	18	17	13	12	10	10	10	6	5.5	12	13	12.5
Total	164	144	127	100	85	67	55	60	47	38.5	85	74	84.5
Appellees' through rates from New Orleans to La Grange	143	124	109	93	74	59	41	48	33.5	29	66	74	59
Difference in favor of Appellees' through rates	21	20	18	7	11	8	14	12	13.5	9.5	19	00	25.5

It will be seen that on every class, the appellees' through rates from New Orleans to La Grange are materially lower than said combination would make.

XXIX.

The Appellees' Rates from New Orleans to La Grange Compare Favorably with the Figures which the Georgia Railroad Commission Would Authorize from a Point Within that State Equidistant with New Orleans from La Grange.

Mr. Biles, speaking of the appellees' rates from New Orleans to La Grange, says:

"They compare favorably with the figures which the Georgia Railroad Commission would authorize from a point within the State equidistant. Using the tariffs authorized by the Georgia Railroad Commission for the railroads under class 4, as an average of all, and applying the 90 per cent basis in effect where traffic moves over two distinct lines of railroad, would result in the following comparative figures:

Classes	1	2	3	4	5	6	A	B	C	D	E	H	F
Appellees' Rates from New Orleans	143	124	109	93	74	59	41	48	35.5	29	66	74	59
Rates according to Georgia Commission scale	148	131	108	90	71	60	60	52	31	28	71	90	60

The traffic in question from New Orleans passes over three lines of railroad, and the comparison with the Georgia scale made on that basis would show the rates from New Orleans in a still more favorable light."

Trans., p. 391.

XXX.

The Appellees' Rates from New Orleans to La Grange Have Been Sufficiently Low to Encourage and Promote the Mercantile Business at La Grange.

Mr. Culp testifies that "business has been transported under these rates in the past and with evident profit to the merchants, since the mercantile business of La Grange, covered by the classes named, is increasing."

Trans., p. 385.

As shown by the United States Census, the population of La Grange in 1870 was 2,053; in 1880, 2,295; in 1890, 3,090; and when the court testimony was taken in this case, the population of La Grange was about 5,000.

Trans., pp. 285, 292, 297, 302, 308, 313, 318, 328, 334.

La Grange has from thirty-five to forty stores, two cotton mills, planing and grist mills, waterworks and electric light plant, two female colleges, a foundry, a carriage factory, a creamery, and a number of smaller industries.

Trans., pp. 285, 292, 297, 302, 308, 313, 318, 328, 334.

It may be that Atlanta, Fairburn, Palmetto, Newnan, and Hogansville have lower rates than La Grange; it may be that such lower rates constitute a preference in favor of Atlanta, Fairburn, Palmetto, Newnan, and Hogansville as against La Grange; but I submit with confidence that no set of rates can be condemned as unreasonable or unjust, *in and of themselves*, where the proof shows, as it does in this case, that traffic has moved under those rates, and at such a profit to the shipper or consignee, as to steadily and materially promote the commercial prosperity of the city where such rates are charged.

XXXI.

The Appellees' Rates from New Orleans to La Grange Are, in the Opinion of Experts, Reasonable and Just.

J. M. Culp, Traffic Manager of the Southern Railway; S. R. Knott, Vice President of the Louisville & Nashville Railroad; G. P. Biles, General Freight Agent of the Cincinnati, New Orleans & Texas Pacific Railway; R. E. Lutz, Traffic Manager of the Atlanta & West Point Railroad and the Western Railway of Alabama; P. J. McGovern, Chairman of the Southern Classification Committee; W. K. Vandiver, Chief Rate Clerk of the Southeastern Freight Association; and T. S. Davant, General Freight Agent of the Norfolk & Western Railway, all of whom are fully competent to speak as experts, express the opinion that the appellees' rates from New Orleans to La Grange are just and reasonable. *And no witness expresses an opinion to the contrary.*

Trans., pp. 385, 380, 390, 104, 116, 117, 370, 376.

Said witnesses state the following as the reasons why they are of opinion that said rates are reasonable and just:

First: They are made up of two sets of rates, namely, the rates from New Orleans to Atlanta, which are lower than they would be but for competition of controlling force at Atlanta; and the low rates from Atlanta to La Grange made by the Railroad Commission of the State of Georgia.

Trans., pp. 380, 381, 370.

Second: They compare favorably with rates for similar distances and to points similarly located.

Trans., p. 376.

Third: They are in line with the rates to other points in the vicinity of La Grange, similarly situated, and with which La Grange competes.

Trans., p. 385.

Fourth: They are in line with the rates from New Orleans to similarly located points.

Trans., p. 381.

Fifth: They are relatively adjusted with respect to rates from Memphis, St. Louis, Cincinnati, and Louisville.

Trans., pp. 385, 376.

Sixth: They are made with due regard to the rates from South Atlantic ports, and Eastern and Western points.

Trans., p. 381.

Seventh: They are practically identical with the rates from Memphis, from which point the distance is practically the same (418 miles).

Trans., p. 391.

Eighth: They are, as a rule, 4 cents per 100 pounds less than the rates from Louisville and other Ohio River points.

Trans., p. 391.

Ninth: They compare favorably with the figures which the Georgia Railroad Commission would authorize from a point within the State equidistant (with New Orleans from La Grange).

Trans., p. 391.

Tenth: Considering the amount of traffic moving from New Orleans to La Grange, the appellees' rates constitute no more than a reasonable compensation for the service performed in transporting traffic 425 miles.

Trans., pp. 390, 391.

Eleventh: They do not yield the carriers excessive revenue for the service performed.

Trans., p. 376.

Twelfth: Business has been transported under those rates in the past, and with evident profit to the merchants; since the mercantile business of La Grange covered by the classes is increasing.

Trans., p. 385.

Thirteenth: They are lower than rates at which the property could be transported by any other known means of rail conveyance between New Orleans and La Grange.

Trans., p. 385.

In the cases of the Interstate Commerce Commission v. Western & Atlantic Railroad Company et al., decided by the Fifth Circuit Court of Appeals, on March 21, 1899, cases which involved precisely the same questions as are involved in the case at bar; that Court in speaking of the reasonableness of the rates in controversy in those cases, said:

"The most careful consideration of the testimony brought up in the records in these cases does not disclose any evidence that was offered by the appellant (the Commission) in the Circuit Court tending to show that the rates, separately considered, to the respective points, are not reasonable and just; and the replies that were drawn by a most skillful cross-examination from the witnesses, called by the appellees (the railroad companies), do not show or tend to show, that the rates to the respective points are not reasonable and just. On the contrary, the great volume of testimony, given by these witnesses (who show full competency to testify), is directly and clearly to the effect that the rates are reasonable and just. One witness gives a reason for this opinion (for the subject is hardly susceptible of better proof than

the opinion of experts) that the rates are fixed upon the lowest obtainable combination of the rates to competitive points, with the local rates therefrom to the noncompetitive points, so that the traffic to the noncompetitive stations has the benefit of whatever reductions competition has effected in the adjustment of rates to the competitive points, and that the rates are lower than prevail in some of the other sections of the country, and lower than can be obtained by any other means of transportation, and are not higher than are charged from other points of distribution to stations on other railroads under similar circumstances and conditions. And another witness says the rates are 'just and reasonable, in that they are not unjustly or unreasonably high. They are lower than the rates at which the property can be transported by any other means of transportation. They have not prevented the shipment of freight. Traffic has been shipped with profit under these rates. They are just, relatively, to rates to other points in the State of Georgia similarly situated. These rates are based upon rates to Chattanooga, which are controlled and fixed by competition, and added to the rates from Chattanooga to the several stations, which are the same for the same distance as the rates fixed by the Railroad Commission of Georgia.' These reasons do not convince the counsel for appellant (the Commission), but appear to us to have weight."

93 Fed. Rep., pp. 88, 89, I. C. C. v. W. & A. R. R. Co.

XXXII.

Appellant's Comparison of Appellees' Rates with the "Standard Freight Tariff" Rates of the Georgia Railroad Commission for an Equal Distance.

Under a stipulation of counsel made in this case, the appellant filed in the Circuit Court, as evidence, a copy of the "Standard Freight Tariff" as established by the Railroad Commission

of Georgia, as set forth on page 50 of the Twenty-sixth Annual Report of that Commission for the year from October 15, 1897, to October 15, 1898. Said "Standard Freight Tariff" shows the rates fixed by the Georgia Railroad Commission upon classes 1, 2, 3, 4, 5, 6, A, B, C, D, E, F, G and H, for distances from 5 miles to 460 miles, inclusive.

It is agreed in said stipulation that the Atlanta & West Point Railroad is allowed to add 10 per cent to said rates on all the classes named in said "Standard Freight Tariff," except classes C, D and F; and that class C embraces rice.

Trans., pp. 245, 246.

The distance from New Orleans to La Grange, via appellees' line, is 425 miles. The Atlanta & West Point Railroad extends from West Point, via La Grange, to Atlanta, and the distance from West Point to La Grange is 16 miles.

Trans., p. 35.

Under a stipulation of counsel made in this case on June 16, 1899, it is agreed that the following portion of Freight Rule No. 30 is a correct extract from pages 34 and 38 of said 26th Report of the Railroad Commission of Georgia, viz.:

"On shipments of freight not governed by Rule No. 1, originating and terminating in this State, which shall pass over the whole or portions of two or more roads, not under the same control, the maximum rates charged on such shipments shall not be greater than the sum of the local rates on such freight less ten (10) per cent, for the distance hauled over each road. The total rate thus ascertained on such freight from the point of shipment to the point of destination shall be divided in such proportions between the roads over which such freights pass so as to give to each road interested in the shipment its local rate less ten (10) per cent for the distance such shipment is hauled."

Trans., pp. 249, 250.

Appellant's counsel, in the Circuit Court, submitted a table which showed the rates allowed by said "Standard Freight Tariff" for a distance of 425 miles (it being the distance from New Orleans to La Grange), to which he added 10 per cent for carriage by the Atlanta & West Point Railroad; and showed that the sum of the rates thus arrived at is lower than the rates charged by appellees from New Orleans to La Grange.

By reference to said "Standard Freight Tariff" it will be seen that it is what is known as a "distance tariff." The rates increase with the distance, but not in proportion to the distance. In other words, while the *rate* increases, *the rate per ton per mile* decreases with the distance.

To illustrate: The rate fixed by said "Standard Freight Tariff" on first-class freight for five miles is 12 cents per hundred pounds, which is equal to 48 cents per ton per mile; while the rate fixed by it for 460 miles is 94 cents per hundred pounds, which is equal to only 4 cents per ton per mile. The result is that the rates fixed by said "Standard Freight Tariff" for four roads of 100 miles each, are, in the aggregate, materially higher than the rate fixed by said tariff for one road of 400 miles.

Referring again to the rates on first class, as fixed by said "Standard Freight Tariff," and assuming that there are four roads each 100 miles long, the sum of their locals would be as follows:

Road No. 1 (100 miles long) first-class rate.....	45 cents
Road No. 2 (100 miles long) first-class rate.....	45 cents
Road No. 3 (100 miles long) first-class rate.....	45 cents
Road No. 4 (100 miles long) first-class rate.....	45 cents
Total for four roads.....	$1 80
While for a distance of 400 miles owned by one company, the first-class rate fixed by said tariff is, for that distance.....	88 cents

Under Freight Rule 30 of the Georgia Railroad Commission, a portion of which has been quoted above, four railroads of 100 miles each would be entitled to charge the sum of their locals, with a deduction of only 10 per cent. Applying said 10 per cent deduction to the illustration set forth above, it will be found that the first-class through rate allowed by said "Standard Freight Tariff" to four roads of 100 miles each would be $1.62, while the rate for one road of 400 miles would be only 88 cents.

The roads which now constitute appellees' line from New Orleans to La Grange were originally owned and operated by four distinct companies:

1. A road from New Orleans to Mobile, 140 miles long.
2. A road from Mobile to Montgomery, 180 miles long.
3. A road from Montgomery to West Point, 89 miles long.
4. A road from West Point to La Grange, 16 miles long.

Trans., pp. 31, 35, 116, 117.

Applying said "Standard Freight Tariff" for those distances, it will be found that the rates would be as follows:

	1	2	3	4	5	6	A	B	C	D	E	H	F
For a distance of 140 miles	57	48	43	34	27	22	22	22	13	13	27	34	26
For a distance of 180 miles	66	56	48	38	31	26	26	26	15	14	31	38	31
For a distance of 89 miles	42	38	33	29	22	17	17	17	11	10	22	29	21.5
For a distance of 16 miles	18	16	15	12	11	9	9	9	6	5.5	11	12	12.5
Total for 425 miles	183	158	139	113	91	74	74	74	45	42.5	91	113	91
Deduct 10 per cent as required by Rule 30	18	16	14	11	9	7	7	7	4.5	4	9	11	9
Net rates allowed by said tariff	165	142	125	102	82	67	67	67	40.5	38.5	82	102	82
Appellees' through rates from New Orleans to La Grange	143	124	109	93	74	59	41	48	33.5	29	66	74	59
Difference in favor of Appellees' through rates	22	18	16	9	8	8	26	19	7	9.5	16	28	23

It will be seen, therefore, that in applying said "Standard Freight Tariff" it is not fair to treat the several roads which

constitute the line from New Orleans to Montgomery, as though they were owned and operated by one company.

Again, the Georgia Railroad Commission gets its power to make rates from an act of the General Assembly of that State approved October 14, 1879, and its amendments. A copy of said act is filed as an Exhibit to R. E. Lutz's deposition.

Trans., p. 177, *et seq.*

By reference to said act, it will be seen that the rate-making powers of said Commission are, for all practical purposes, absolute and despotic so long as the rates are not confiscatory in their character. It will be seen that the Commission was appointed at the instance of the shipping public; and, therefore, any rates fixed by that Commission may fairly be assumed to be not only reasonably low from the shippers' standpoint, but *un*reasonably low from the carriers' standpoint. They cannot, therefore, be fairly used as evidence of reasonably high rates to be charged by carriers in the States of Alabama, Mississippi, and Louisiana; those being the three States in which all of the line in controversy is situated, except the 16 miles which lies between West Point and La Grange.

XXXIII.

Appellant's Comparison of Appellees' Rates from New Orleans to La Grange with the Local Distance Tariff of the Illinois Central Railroad.

Under a stipulation of counsel made in this case at the instance of appellant, it is stipulated "that under the local distance tariff of the Illinois Central Railroad Company (Southern lines), I. C. C. No. B, 316, issued May 18, 1897, and effective June 1, 1897," the class rates for the distance of 425 miles are, except

on classes A, C, D and F, lower than appellees' rates, for the same distance, from New Orleans to La Grange.

It appears from said stipulation that said tariff of the Illinois Central Railroad is a "local distance tariff;" and it is doubtless constructed upon a mileage basis somewhat similar to that used in constructing the "Standard Freight Tariff" of the Georgia Railroad Commission.

Trans., p. 247.

In Section XXXII, I have shown that in what is known as a "distance tariff," the rates increase with the distance, but not in proportion to the distance, and the result is that the rates fixed by a "distance tariff" for four roads of 100 miles each are in the aggregate, materially higher than the rate fixed by such tariff for one road of 400 miles.

Under Section 16 of the Act to Regulate Commerce, the Circuit Court has power "if it think fit to direct and prosecute in such mode and by such persons as it may appoint all such inquiries as the Court may think needful to enable it to form a just judgment in the matter of said petition."

K. & I. Bridge Co. v. L. & N. R. R. Co., 37 Fed Rep., p. 567.

If this Court should be of opinion that a comparison of appellees' rates with said tariff I. C. C. No. B, 316, "for a distance of 425 miles" is of any value, the appellees now ask the Court to remand the case with directions for the Circuit Court to call upon the appellants to file a complete copy of said tariff for all distances, or to file a statement showing the rates charged in said tariff upon the several classes for distances of 16, 89, 105, 140, 180 and 320 miles, respectively. If said tariff or statement be filed, appellees have reason to believe that it will be found that said rates will be shown in said tariff to be as follows:

	Miles	Classes												
		1	2	3	4	5	6	A	B	C	D	E	H	F
For the distance from New Orleans to Mobile	140	68	54	44	37	32	28	27	29	23	19	32	44	43
For the distance from Mobile to Montgomery	180	75	60	50	41	35	31	30	32	26	22	35	50	49
For the distance from Montgomery to West Point	89	58	46	38	32	27	24	22	24	20	17	27	38	38
For the distance from West Point to La Grange	16	33	26	22	18	16	14	13	14	13	10	16	22	23
Total for	425	234	186	154	128	110	97	92	99	82	68	110	154	153
For the distance from New Orleans to Montgomery	320	85	68	56	47	40	35	35	37	29	25	40	56	55
For the distance from Montgomery to La Grange	105	62	50	41	34	29	26	24	26	21	18	29	41	39
Total for	425	147	118	97	81	69	61	59	63	50	43	69	97	94
Appellees' through rates from New Orleans to La Grange	425	148	124	109	93	74	59	41	48	33.5	29	66	74	59

The comparison which the appellant seeks to make between appellees' rates and said "local distance tariff" of the Illinois Central Railroad assumes that the line from New Orleans to La Grange (a distance of 425 miles) is operated by one company, whereas, it was originally operated by four independent companies, and is now operated by two independent managements.

If the Illinois Central Railroad were to receive the entire revenue for a haul of 425 miles, it might be willing to accept the rates mentioned in said stipulation; and yet, if the haul were for only 320 miles (the distance from New Orleans to Montgomery), it would demand a much higher rate per ton per mile; and if the haul were for only 105 miles (the distance from Montgomery to La Grange), it would demand a *very* much higher rate per ton per mile.

There is nothing in the record to show what is meant by the "Southern lines" of the Illinois Central Railroad. Nor is there anything in the record to show that the circumstances and conditions attending the transportation of traffic over those lines are substantially similar to those attending the transportation

of traffic over the appellees' line from New Orleans to La Grange.

The "Southern lines" of the Illinois Central Railroad are closely paralleled all the way from Cairo to New Orleans by the Mississippi River, and even its "local distance" rates are dominated by the water rates on the Mississippi River.

New Orleans Cotton Exchange v. Illinois Central R. Co., 2 I. C. Rep., 779, 791.

In the case of Business Men's Association v. Chicago, St. Paul, Minneapolis & Omaha Railroad Company, the Commission said: In the "cases of Evans & Reed v. Oregon Railway & Navigation Company, I Inters. Com. Com. Rep., 536, 1 Inters. Com. Rep., 641, we had occasion to consider the subject of comparing the rates established on railroads in one portion of the country with those in another, operated under substantially different circumstances and conditions, and we there held that such comparisons are not fair tests. That is equally true of the present case of comparisons between rates made in that portion of the country so near as to be dominated by the water rates on Lake Superior, and on the other hand, rates in the far interior made under substantially different circumstances and conditions."

2 I. C. Rep., p. 47, Business Men's Asso. v. C. St. P. M. & O. Ry. Co.

In case of Freight Bureau v. C. N. O. & T. P. R. Co., the Commission said:

"A comparison of rates on one road or line with those on another for the purpose of determining the reasonableness of either, is, as before stated, valuable only to the extent of the similarity of circumstances and conditions attending the transportation in

the two cases and relative equality in rates is only necessary in the *degree* of such similarity."

4 I. C. Rep., p. 611, Freight Bureau v. C. N. O. & T. P. R. Co.

The burden of proof was upon the appellant to show that the circumstances and conditions attending the transportation of traffic over the "Southern lines" of the Illinois Central Railroad are substantially similar to those attending the transportation of traffic over the appellees' line from New Orleans to La Grange; and as appellant introduced no testimony upon this point, the "local distance tariff" rate of those lines for the distance of 425 miles is of no value as a standard of comparison in this case.

XXXIV.

Appellant's Comparison of Appellees' Rates from New Orleans to La Grange with Certain Tariffs of the Southern Railway.

Under the stipulation of counsel referred to in the last section, it is stipulated "that under local freight tariff No. 1047 W. S., of the Southern Railway (western system), I. C. C. 233, effective February 18, 1895, applying on business within the States of Tennessee and Alabama, and on interstate traffic between stations in the States of Tennessee, Georgia, Alabama, and Mississippi," the class rates for a distance "of over 300 miles" are, except on classes A, C, D and F, lower than appellees' rates for 425 miles from New Orleans to La Grange.

As said tariff No. 1047 W. S. is styled a "local freight tariff," it is constructed upon a mileage basis somewhat similar to that used in constructing the "Standard Freight Tariff" of the Georgia Railroad Commission.

Trans., p. 248.

If the Court should be of opinion that a comparison of appellees' rates with said tariff 1047 W. S., "for a distance of over 300 miles" is of any value, the appellees now ask the Court to remand the case with directions to the Circuit Court to call upon the appellant to file a complete copy of said tariff for all distances, or to file a statement showing the rates charged in said tariff upon the several classes for distances of 16, 89, 105, 140, 180 and 320 miles, respectively.

If said tariff or statement be filed, appellees have reason to believe that it will be found that said rates will be shown in said tariff to be as follows :

	Miles.	Classes.												
		1	2	3	4	5	6	A	B	C	D	E	H	F
For the distance from New Orleans to Mobile	140	68	58	52	47	43	31	27	29	25	22	43	47	50
For the distance from Mobile to Montgomery	180	76	65	58	51	47	35	31	33	28	25	47	51	56
For the distance from Montgomery to West Point	80	57	50	45	41	38	26	23	23	21	18	38	41	42
For the distance from West Point to La Grange	16	28	24	22	20	17	13	13	14	13	10	18	20	26
Total for	425	229	197	177	159	145	105	94	99	87	75	146	159	174
For the distance from New Orleans to Montgomery	320	103	88	77	55	52	42	43	41	35	32	52	55	70
For the distance from Montgomery to La Grange	105	61	54	49	44	40	28	24	25	22	19	40	44	44
Total for	425	164	142	126	99	92	70	67	69	57	51	92	99	114
Appellees' thro' rates from New Orleans to La Grange	425	143	124	109	93	74	59	41	48	33.5	29	66	74	59

The comparison which appellant seeks to make between appellees' rates and said local freight tariff No. 1047 W. S. assumes that the line from New Orleans to La Grange is operated by one company; whereas it was originally owned and operated by four distinct companies; and it is now operated by two independent managements.

There is nothing in the record to show what is meant by the "Western System" of the Southern Railway, nor is there any-

thing in the record to show that the circumstances and conditions attending the transportation of traffic over said 'Western System" are substantially similar to those attending the transportation of traffic over the appellees' line from New Orleans to La Grange.

In said stipulation it is also agreed that "under joint freight tariff of the Southern Railway Company, I. C. C., No. 2910, issued March 2, 1898, and effective March 5, 1898," the class rates for a distance of 430 miles and over 420 miles are lower than appellees' rates from New Orleans to La Grange.

Said stipulation shows no rates under said "joint freight tariff" except for the distance "of 430 miles and over 420 miles."

If the Court should be of opinion that a comparison of appellees' rates with said "joint freight tariff No. 2910" "for a distance of 430 and over 420 miles" is of any value, the appellees' now ask the Court to remand the case with directions to the Circuit Court to call upon the appellant to file a complete copy of said tariff for all distances, or to file a statement showing the rates charged in said tariff upon the several classes for distances of 16, 89, 105, 140, 180 and 320 miles, respectively.

If said tariff or statement be filed, appellees have reason to believe that it will be found that it contains three tables, numbered 1, 2 and 3, and that in table No. 1, said rates as shown therein, are as follows:

	Miles.	Classes.												
		1	2	3	4	5	6	A	B	C	D	E	H	F
For the distance from New Orleans to Mobile	140	68	59	51	42	34	25	22	27	24	18	34	42	43
For the distance from Mobile to Montgomery	180	75	67	58	50	40	29	24	30	26	20	40	50	48
For the distance from Montgomery to West Point	89	55	46	39	32	25	20	18	22	19	16	25	32	34
For the Distance from West Point to La Grange	16	25	21	18	15	12	10	10	12	10	9	12	15	18
Total for	425	223	193	166	139	111	84	74	91	79	63	111	139	143
For the distance from New Orleans to Montgomery	320	93	83	72	60	50	40	30	38	32	27	48	58	58
For the distance from Montgomery to La Grange	105	61	52	44	36	29	22	20	24	21	17	29	36	38
Total for 425 miles	425	154	135	116	93	79	62	50	62	53	44	77	94	96
Appellees' thro' rates from New Orleans to La Grange	425	143	124	109	93	74	59	41	48	33.5	29	66	74	59

The comparison which appellant seeks to make between appellees' rates and said "joint freight tariff," assumes that the line from New Orleans to La Grange is operated by one company, whereas it was originally owned by four distinct companies; and is now operated by two independent managements.

There is nothing in the record to show what territory is covered by said "joint freight tariff;" nor is there anything to show that the circumstances and conditions attending the transportation of such traffic as may move under said "joint freight tariff" are substantially similar to those attending the transportation of traffic over the appellees' line from New Orleans to La Grange.

As shown under Section XXXIII, the burden was upon appellant to show that the circumstances and conditions attending the transportation of such traffic as may move under said "joint freight tariff" are substantially similar to those attending the transportation of traffic over the appellees' said line; and appellant having failed to introduce such testimony, the comparison between appellees' rates and said "joint freight tariff" is of no value.

XXXV.

The "Average Receipts Per Ton Per Mile" of a Road Cannot be Used as a Standard of Reasonableness for the Rates of that Road on Any Particular Traffic.

Counsel for appellants, in the Circuit Court, instituted certain elaborate comparisons involving what are known as the "average receipts per ton per mile;" and contended that said comparisons demonstrated that the rates from New Orleans to La Grange are unreasonably high.

The "average receipts per ton per mile" of a road, or, as it is sometimes termed, the "revenue per ton per mile," cannot be used as a standard of reasonableness for the rates of even that road, on any particular traffic.

Mr. J. M. Smith, the Auditor of the Interstate Commerce Commission, who was examined as a witness for appellant, was forced to admit, upon cross examination, that in his opinion it would be impracticable to use the "revenue per ton per mile" as a standard for fixing the reasonablenes of rates. He admits that it would be "very unlikely" for "the revenue per ton per mile to ever be the same, upon the same railroad, in any two successive years;" and he also admits that it would be "very unlikely" for "the revenue per ton per mile" to ever be the same upon any two divisions of even the same railroad.

Trans., p. 277.

He admits that, in his opinion, it would not be possible to ascertain the average revenue per ton per mile for any one year until after the expiration of such year; he also admits that he

knows of no case where any general freight agent or traffic manager ever used the average revenue per ton per mile as a factor in making freight rates.

Trans., pp. 277, 278.

The "average receipts per ton per mile" or the "revenue per ton per mile" is ascertained by dividing the "total freight revenue" of a railroad by the "number of tons carried one mile."

Trans., p. 276.

The "total freight revenue" of a company is ascertained by adding together the freight charges on thousands or millions of shipments, made under various conditions and circumstances. Some shipments consist of single packages, weighing perhaps less than 100 pounds. Other shipments are made in quantities of more than 100 pounds, but less than car loads; others are made in car-load quantities; and others in train-load quantities. Some of the freight shipped is very light and bulky, and of considerable value per ton; other freight consists of heavy, coarse articles, of comparatively small value per ton. Some shipments are made over short distances; others over long distances; and others over the entire length of the road. The freight charges per ton, per mile, necessarily vary within wide limits, from 8 or even 10 cents per ton, per mile, on first-class freight, carried over only a few miles of the road between local stations, to 3½ mills per ton, per mile, on long-haul coal and mineral traffic, and long distance competitive traffic.

In order to ascertain the "number of tons carried one mile," it is necessary to keep an account of the actual distance each ton is carried. Each ton is then multiplied by the number of miles it is carried, so as to get its equivalent in tons carried one mile; and the aggregate of the equivalents in tons carried one mile shows the "number of tons carried one mile."

Trans., p. 276.

Of course, in actual practice, no one ton of freight is ever carried exactly one mile, and the "number of tons carried one mile" is made up of thousands or millions of shipments of different kinds of freight, carried over different parts of the line, and carried different distances.

The "number of tons carried one mile" is of no more value in determining what are reasonable rates on each of the thirteen classes of traffic from New Orleans to La Grange, than the fact that the earth is the equivalent of a certain number of grains of sand, would be in ascertaining the reasonable price of a tombstone.

As stated above, it is by dividing the "total freight revenue" by the "number of tons carried one mile" that we ascertain the "average receipts per ton per mile."

As neither the divisor nor the dividend has the slightest relation to the reasonableness of rates, the quotient can have no relation to it.

One might as well divide the number of spikes in a railroad track by the number of crossties, and expect the quotient to show what are reasonable rates for each of the thirteen classes of traffic, between any two given points.

XXXVI.

The "Average Receipts Per Ton Per Mile" of One Road Cannot be Used as a Standard of Reasonableness for the Rates of Another Road.

In the last preceding section of this argument, I have shown that the "average receipts per ton per mile" of any given road cannot be used as a standard of reasonableness for the rates even of that road on any given traffic; and *a fortiori* it cannot be used as a standard of reasonableness for the rates of other roads.

XXXVII.

The Relative Rates on the Different Classes Remaining the Same, the "Average Receipts Per Ton Per Mile" is of No Value Except to Show the Proportions of the Tonnage of the Different Classes of Traffic.

The tonnage and rates of a road remaining the same, its "average receipts per ton per mile" will increase as the proportion which its high class traffic bears to its low class traffic, increases.

To demonstrate this fact, let us assume that the tonnage of any given road is equivalent to 2,000,000 tons carried one mile, in each of three consecutive years. During the first year, let us assume one-fourth of the tonnage to be class 1, carried at 5 cents per ton, and three-fourths of the tonnage to be class A, carried at 1 cent per ton. We would have:

500,000 tons of class 1 at 5 cents	$25,000
1,500,000 tons of class A at 1 cent	15,000
Or, 2,000,000 tons at 2 cents	$40,000

The "average receipts per ton per mile" for the first year would be 2 cents.

During the second year, let us assume one-half of the tonnage to be class 1, carried at 5 cents per ton, and the other half to be class A, carried at 1 cent per ton. We would have:

1,000,000 tons of class 1 at 5 cents	$50,000
1,000,000 tons of class A at 1 cent	10,000
Or, 2,000,000 tons at 3 cents	$60,000

The "average receipts per ton per mile" for the second year would be 3 cents.

During the third year, let us assume three-fourths of the tonnage to be class 1, carried at 5 cents per ton, and the remaining one-fourth to be class A, carried at 1 cent per ton. We have:

1,500,000 tons of class 1 at 5 cents	$75,000
500,000 tons of class A at 1 cent	5,000
Or, 2,000,000 tons at 4 cents	$80,000

The "average receipts per ton per mile" for the third year would be 4 cents.

We see that the tonnage remained the same, and the rates charged on classes 1 and A, respectively, remained the same during all three of the years; and yet the "average receipts per ton per mile" for the third year was double what it was for the first year. We see, also, that it increased precisely as the proportion which the high class traffic bore to the low class traffic increased. But the demonstration does not throw any light whatever upon the reasonableness of the rates either on class 1, or on class A.

XXXVIII.

The Average of a Number of Dissimilar Things is Misleading as to Any One of Them.

I have shown that the "average receipts per ton per mile" cannot be used as a criterion of the reasonableness of rates, because such "average receipts" has no relation whatever to the matter. But even if some relation existed, it is self-evident that the value of a thing cannot be ascertained by applying, as a measure, the average value of a number of dissimilar things,

which differ greatly in value as compared with each other, and as compared with the thing the value of which is to be measured.

The "average receipts per ton per mile" represents the average received per ton per mile by a railroad for the transportation of hundreds of thousands or millions of shipments, made under varying conditions and circumstances. As stated above, some shipments consist of single packages, weighing, perhaps, less than one hundred pounds; some shipments are made in car-load quantities; and some in train-load quantities. Some of the freights are very light and bulky, and of considerable value per ton; others consist of heavy, coarse articles of comparatively small value per ton. Some shipments are made over short distances; others over longer distances; and others over the entire length of the road. The freight receipts per ton per mile necessarily vary within wide limits, from 8 or even 10 cents per ton per mile on first-class freight carried over only a few miles of the road; to 3½ mills per ton per mile, and even less, on long-haul coal and mineral traffic.

No country merchant who keeps in his store a great variety of articles, differing greatly in value, would undertake to ascertain his "average receipts" per pound, or per yard, and to sell all of his goods to his customers at his "average receipts." He would find plenty of customers for his dry goods, but none for his coffee and sugar.

The duration of the lives of a thousand men or women would be of value in constructing tables for insuring human lives; but the duration of the lives of a thousand animals of different kinds, whose duration of life differs widely, would be of no value in constructing tables for insuring human lives; or for insuring the life of any of the thousand kinds of animals included in the average. In fact, the average of a number of dissimilar things is absolutely misleading as to any one of them.

It is stated in Edison's Encyclopedia, p. 201, that the duration of life of certain animals, etc , is estimated to be as follows:

The Whale	1,000	years.
The Swan	200	"
The Elephant	100	"
The Goose	80	"
The Lion	70	"
The Beaver	50	"
The Hawk	40	"
The Horse	30	"
The Cow	20	"
The Monkey	18	"
The Squirrel	7	"
The Wren	3	"
The Bee	$\frac{1}{2}$	"
The average for the above is	$124\frac{1}{2}$	"

An insurance company might use the average with safety in insuring an elephant for 124 years; but it would not do so in the case of a bee.

It will be noticed that the average does not represent the duration of life of any one of the thirteen animals, etc., mentioned above.

It is stated by the Commission in its Eleventh Annual Report (1897), p. 66, that the classifications now in use in this country embrace from 5,000 to 7,000 items; and when we remember that those items are transported by the railroads in varying quantities, for varying distances, and under varying circumstances as to speed, etc., it must be evident that an average of the receipts realized from the transportation of so many different articles, under so many different conditions, must be positively misleading in ascertaining what is a reasonable rate for transporting any one of those articles, for any given distance.

The sixth section of the Act to Regulate Commerce requires every common carrier subject to its provisions to file with the Commission copies of its schedules of rates. With those schedules, and with the classifications which govern them, it is practicable for the Commission to compile a table showing the rates charged by each of said carriers upon each of the articles covered by the classifications, and for each of the distances over which the article may be carried. From such tables, it might be shown what is the average rate received per ton per mile, on each of those articles, by all the railroads in this country. And though the conditions under which different railroads operate vary widely, there might be some plausibility in insisting that the average receipts per ton per mile realized by all the railroads in this country from the transportation of a given article, as for instance bituminous coal, should be taken as presumptive evidence of the reasonableness of that rate, wherever the matter might be drawn in question. But the "average receipts per ton per mile" relied upon in argument by counsel for the appellant is not the "average receipts per ton per mile" *of any given article, or of any given class of freight, or even of all classified freight*, but it is an average of all the articles and commodities (whether classified or not), that may be carried by a railroad, however dissimilar in nature those articles and commodities may be.

XXXIX.

The Use of the "Average Receipts" as a Standard in Rate Making Would, by Successive Repetitions, Reduce All Rates to Zero.

The official classification contains six classes, numbered from 1 to 6. Let us assume that the rates charged by a certain railroad, for a certain distance, on the several classes, are, in cents per 100 pounds, as follows:

On class 1..... 6 cents
On class 2..... 5 cents
On class 3..... 4 cents
On class 4..... 3 cents
On class 5..... 2 cents
On class 6..... 1 cent

The average of said rates is 3.5 cents. If the average of rates is to be taken as the standard of reasonableness, the rates on the first three classes would be too high, inasmuch as they exceed the average; and, in revising the tariff, the new rates would be as follows:

On class 1..... 3.5 cents
On class 2..... 3.5 cents
On class 3..... 3.5 cents
On class 4..... 3 cents
On class 5..... 2 cents
On class 6..... 1 cent

The average of those rates is 2.75 cents; and again using the average as a maximum, the second revision would stand as follows:

On class 1..... 2.75 cents
On class 2..... 2.75 cents
On class 3..... 2.75 cents
On class 4..... 2.75 cents
On class 5..... 2 cents
On class 6..... 1 cent

The average of those rates is 2.33 cents; and again using the average as a maximum, the third revision would stand as follows:

On class 1..... .....2.33 cents
On class 2..... ... .2 33 cents
On class 3..... .....2.33 cents
On class 4.....2.33 cents
On class 5..... .....2 cents
On class 6..... .. 1 cent

The average of those rates is 2.05 cents; and again using the average as a maximum, the fourth revision would stand as follows:

On class 1..... 2.05 cents
On class 2..... .....2.05 cents
On class 3 ....2.05 cents
On class 4.....2.05 cents
On class 5..... .....2 cents
On class 6.....1 cent

The average of those rates is 1.86 cents.

The foregoing illustrations are sufficient to demonstrate that if the average of rates is to be the standard of reasonableness, all rates above the average must be adjudged to be too high, and be reduced so as not to exceed the average; that at each revision the average is necessarily reduced; and that it requires only a certain number of revisions to reduce all the rates to zero.

XI.

If the "Average Receipts Per Ton Per Mile" Could be Used at All in Rate Making, it Could Only be Used in Connection with Other Things; and Even Then it Could be Used Only in Judging of the Reasonableness of the Schedule as a Whole.

Mr. J. M. Smith, Auditor of the Interstate Commerce Commission, upon cross examination by appellees, said:

"In my opinion it would be impracticable to use the 'revenue per ton per mile' (*i. e.*, the 'average receipts per ton per mile') as a standard for fixing the reasonableness of rates. At the same time the 'revenue per ton per mile' on all classes of traffic of a railroad *might* serve a useful purpose in determining the reasonableness of its rates *in general* by comparison with the average rate per ton per mile of other roads *similarly situated*."

Trans., p. 277.

Mr. Smith is careful to confine his opinion to the reasonableness of the rates of a company "*in general;*" and even in that case he restricts the comparison to roads "*similarly situated.*"

In Section XX, I have shown that in determining the reasonableness of the rates of a company, its schedule "as a whole" must be considered; and that it is impossible to determine the reasonableness of rates upon a particular article, or upon a particular portion of the traffic carried by a company, without considering what its rates are on the other articles, or on the other portions of traffic carried by it. I understand Mr. Smith to concur in this view, when he says that the revenue per ton per

mile "*might* serve a useful purpose in determining the reasonableness" of the rates of a company "*in general*;" *i. e.*, in determining the reasonableness of its "schedule, taken as a whole."

Counsel's contention is that if the "revenue per ton per mile" —*i. e.*, "the average receipts per ton per mile," is useful in determining whether appellees' rates "*in general*" are excessive, it must be useful in determining whether the rates on that portion of appellees' traffic which moves from New Orleans to La Grange, are excessive.

It would be equally logical to contend that if a certain factor, *in connection with others*, may enable us to solve a certain equation, the same factor will, in the absence of the others, enable us to solve any part of the equation.

If you ask a gas company (engaged in the manufacture of gas) what it costs that company to produce a ton of coke, its reply must be that this depends on what the public will pay for the gas. And if you ask the company what it costs to produce a thousand cubic feet of gas, its reply must be that this depends on what the public will pay for the coke.

The working expenses of the whole operations of the company are so much. The result of those operations is the output of a certain quantity of gas, and a certain quantity of coke. But you cannot say what is a reasonable rate to be charged for the gas, until you know what rate the company can obtain for the coke; and you cannot say what is a reasonable rate to be charged for the coke, until you know what rate the company can obtain for the gas. If the company can obtain such rates for the gas as will enable it to approximate a fair return on its investment, it can afford to accept exceedingly low rates on the coke.

Now take, on the other hand, a coke company engaged in

manufacturing coke for neighboring blast furnaces. It can use in heating its coke ovens, a certain quantity of the gas which is produced in making the coke, but no more; and for the remainder of the gas produced, the company has probably no market at all. In this case, evidently, the coke must be looked to as the main reliance to earn a fair return on the investment, and the most that can be expected of the gas is that it shall help, in some slight degree, to lighten the burden.

In the case of a railroad company, the result of its operations *as a whole* is the transportation of a certain number of passengers, a certain quantity of mail and express matter, and a certain number of tons of freight; and to those operations, *as a whole*, it must look for a reasonable return upon the fair value of its investment.

What is denominated "local tariff" is affected by competition between product and product, and competition between "market and market."

What is denominated "competitive tariff" is affected not only by competition between product and product, and competition between market and market, but also by competition between carrier and carrier.

In the case of one railroad company, only one-fourth of its traffic may be "local," and the remaining three-fourths "competitive;" while, in the case of another company, the proportions may be exactly reversed.

Whatever may be the proportion which the "competitive traffic" bears to the "local traffic" of a company, the company must, of necessity, accept such rates on its "competitive traffic" as its rivals may offer; and if the revenue derived from its "competitive traffic" fails to pay a reasonable return upon the value

of the investment, the deficit must be made up by increasing the rates on the "local traffic"—if it be possible. And if competition between product and product, or between market and market, prevents an increase in the rates on the "local traffic," the company must cease operations.

In the case of a railroad company, as in cases of the gas company, and the coke company, referred to above, you must look to the operations of the company *as a whole*, and before you can decide whether the rates charged upon one source of revenue are reasonable, you must ascertain what amount can be realized by the company from its other sources of revenue.

We see, therefore, that while, as Mr. Smith says, such data as the "revenue per ton per mile," *i. e.*, the "average receipts per ton per mile," "might" possibly be useful in determining whether the rates of a company, "*in general*," are excessive, it is of no value whatever in determining the reasonableness of rates charged on any particular portion of the traffic carried by the company.

In other words, as shown above in Section XX, in order to determine whether the rates of a railroad company are reasonable *its operations as a whole* must be considered.

XLI.

"The Average Receipts Per Ton Per Mile" is Kept by Railroads in Obedience to Orders of the Interstate Commerce Commission, and Not for Rate-making Purposes.

Counsel for appellant, in the Circuit Court, referred to the fact that "the average receipts per ton per mile" has been kept and recorded by the railroads; and he contended that it has been kept by them for the purpose for which he seeks to use it in this case; namely, to ascertain whether rates are too high or too low.

Section 20 of the Act to Regulate Commerce authorizes the Commission to require annual reports from all railroads that are subject to the act, and "to prescribe the manner in which such reports shall be made."

The Commission has prescribed the form of such reports, and each railroad is furnished by the Commission with a printed blank upon which to make its reports. Page 61 of said blank calls for the "average receipts per ton per mile," and, of course, all railroads that are required to make said reports, so keep their books as to be able to show the "average receipts per ton per mile." A copy of page 61 of the blank furnished by the Commission is filed as Exhibit "E" (9) to the deposition of G. C. Smith taken before the Commission.

Trans., pp. 96, 152, 153, 154.

While the railroads report to the Commission the "average receipts per ton per mile," it has never been used by the railroads in rate construction; and for the simple reason that freight rates must be controlled by commercial laws affecting competition; and cannot be fixed by arbitrary formulæ.

No practical traffic manager ever used any such data in the construction of a freight schedule; and no one else has ever attempted to do so, except the Interstate Commerce Commission.

Mr. J. M. Smith, the Auditor of the Commission, was forced to admit on cross-examination that he never knew of any general freight agent, or traffic manager, who used the "average revenue per ton per mile" as a factor in making freight rates.

Trans., pp. 277, 278.

Mr. Smith says that he is not familiar with the methods or bases used by the various traffic officials throughout the country in fixing their freight rates; but he admits that from January 1,

1888, to the present time, he has been Assistant Auditor, or Chief Auditor, of the Commission; and that for fourteen years before he entered the service of the Commission, he was, for most of the time, in the general freight department of the Louisville & Nashville Railroad.

Trans., p. 251.

He was introduced by the complainant as an expert in this case.

XLII.

Freight Rates are Controlled by Practical Commercial Considerations; and They Cannot be Adjusted by Mathematical Calculation.

One of the chief errors into which the Commission has fallen in attempting to fix rates for carriers, as well as in attempting to judge of the rates fixed by carriers, is in supposing that rates can be constructed according to certain mathematical formulæ; that some kind of an equation can be invented, in which certain statistical data can be arranged as factors, and that by the solution of such equations it can be ascertained what are reasonable rates on any given article of freight, for any given distance on any given railroad. Among the factors which it has attempted to use in constructing such equations have been the "average receipts per ton per mile;" the "estimated cost of carrying one ton one mile;" the "number of tons carried of freight earning revenue;" the "average distance haul of one ton;" the "freight earnings per train mile," etc. But neither one, nor all, of such factors can be used in the practical business of rate-making.

Rates of freight are subject to the commercial law of supply and demand. Competition between rail lines and water lines; competition between product and product; and competition between market and market are the factors which must govern railroad companies in the establishment of tariffs. No railroad

freight tariff, not even a local freight tariff, can now be established arbitrarily by a railroad company. In fact, it cannot be truthfully said that railroad companies make their rates at all, at the present time. All that they can now do is to adjust them, from time to time, to the surrounding conditions and circumstances as they may exist, and no regard can be paid to any kind of mathematical formulæ, or scientific theories.

In Texas & Pacific Ry. Co. v. I. C. C., known as the "Import Case," this Court quotes from Wills, Judge, the following:

"I first observe that these are, in my judgment, eminently practical questions, and if this Court once attempt the hopeless task of dealing with questions of this kind with any approach to *mathematical accuracy*, and tries to introduce a precision *which is unattainable in commercial and practical matters*, it would do infinite mischief and no good."

162 U. S., p. 225, T. & P. Ry. Co. v. I. C. C.

This Court also quotes from Lord Herschell as follows:

"I quite agree with Mr. Justice Wills that it is impossible to exercise a jurisdiction, such as is conferred by this section *by any process of mere mathematical or arithmetical calculation*. When you have a variety of circumstances, differing in the one case from the other, you cannot say that a difference of circumstances represents, or is equivalent to such a fraction of a penny difference of charge, in the one case, as compared with the other. A much broader view must be taken, and *it would be hopeless to attempt to decide a case by any attempted calculation*. I should say that the decision must be arrived at broadly and fairly, by looking at all the circumstances of the case, that is, looking at all the circumstances which are proper to be looked at."

162 U. S., pp. 227, 228, T. & P. Ry. Co. v. I. C. C.
73 Fed. Rep., p. 421, I. C. C. v. L. & N. R. R.
74 Fed. Rep., p. 721, I. C. C. v. Ala. Mid. Ry. Co. et a

XLIII.

Appellant's Comparison of Appellees' Rates from New Orleans to La Grange with the Average Receipts Per Ton Per Mile of All Railroads in the United States.

The Commission, in its report and opinion, refers to the fact that the appellees' rates from New Orleans to La Grange yield more revenue per ton per mile than "the average revenue received on all traffic by all roads in the United States for the year ending June 30, 1895."

Trans., p. 37.

In the "Statistics of Railways in the United States" (1895), published by the Commission, it is stated that the railways of the United States closed the year covered by the report (*i. e.*, the year ending June 30, 1895) *with a deficit*, from the operations of the year, of $29,845,241; and that they closed the preceding year, ending June 30, 1894, *with a deficit* of $45,851,294; "showing that the railways of the United States have run behind during the two years in question $75,696,535. Should this continue, *either the investments or the credit of railways must disappear.*"

Statistics of Railways, 1895, p. 58.

This Court has held that a railroad company "is entitled to a fair return upon that which it employs for the public convenience."

169 U. S., pp. 546, 547, Smyth et al. v. Ames et al.

I submit with great confidence that this Court ought not to compel the appellees to reduce the rates from New Orleans to

La Grange to a point that will yield not more than the average revenue per ton per mile received by "all the railroads in the United States for the year 1895," when it appears that the operations of "all the railroads in the United States" for that year resulted in a deficit of nearly $30,000,000, which followed a deficit of over $45,000,000 for the next preceding year, 1894.

XLIV.

Appellant's Comparison of Appellees' Rates from New Orleans to La Grange with the Average Receipts Per Ton Per Mile of All Railroads in Group V.

The Commission, in its report and opinion, refers to the fact that the appellees' rates from New Orleans to La Grange yielded more revenue per ton per mile than the average revenue received on all traffic, by all roads, in Group V (which includes the appellees' roads), for the year ending June 30, 1895.

Trans., p. 37.

It appears from the "Statistics of Railways in the United States," published by the Commission, that during nine years, beginning June 30, 1890, and ending June 30, 1898, the roads in Group V were operated at a net deficit of $5,159,610.

See Statistics of Railways, 1890, p. 56.
See Statistics of Railways, 1891, p. 76.
See Statistics of Railways, 1892, p. 53.
See Statistics of Railways, 1893, p. 51.
See Statistics of Railways, 1894, p. 57.
See Statistics of Railways, 1895, p. 59.
See Statistics of Railways, 1896, p. 65.
See Statistics of Railways, 1897, p. 67.
Preliminary Report on the Income Account of Railways, 1898, p. 19.

I submit, with great confidence, that this Court ought not to compel the appellees to reduce the rates from New Orleans to La Grange to a point that will yield not more than the average revenue per ton per mile, received by the railroads in Group V, when it appears that said railroads have for the last nine years been operated at a net deficit of more than $5,000,000.

XLV.

Appellees' Schedules as a Whole Do Not Yield More Than a Fair Return Upon the Capital Invested.

I have shown in Section XX that in considering the reasonableness of rates it is impossible to determine the reasonableness of a rate upon a particular article, or of the rates upon a particular portion of a company's traffic, without considering the company's schedule of rates as a whole.

The Commission, in its report and opinion, says:

"The actual paid in or working capital of the Atlanta & West Point Road is therefore not in excess of $1,232,200 or $14,378.06 per mile, and on this the stockholders have been receiving a return of 12 per cent annually after paying all expenses of operation, repairs, and improvements. They received such return in 1890, and for every year covered by annual reports to the Commission, including the year ending June 30, 1897."

Trans., pp. 38, 39.

Counsel for appellant contends that 12 per cent annually, after paying all expenses of operation, etc., is more than a fair return upon the capital invested.

It is useless, however, to discuss that question; because the Commission is in error in saying that the stockholders of the

Atlanta & West Point Railroad have been receiving a return o
12 per cent upon the capital invested.

They have received an amount equal to 12 per cent upon th
money which they paid into the treasury of their company *i*
discharge of their stock subscriptions; but the money paid upo
their *stock* subscriptions does not represent more than one hal
the money which the stockholders *have invested in the road.*

The capital stock of the Atlanta & West Point Railroad Com
pany is $1,232,200; and the dividend paid upon it is only 6 pe
cent.

Trans., p. 94.

The total amount of its funded debt is $1,232,200; and th
interest paid upon it is only 6 per cent.

Trans., pp. 94, 95.

Said funded debt consists of "certificates of indebtedness,
issued by the company to its stockholders to represent earning
of the road which belonged to the stockholders, and could hav
been legally and properly distributed among them as dividend
but which were used by them in the permanent betterment o
the road.

Trans., pp. 137, 138.

Earnings which could have been properly distributed as divi
dends, but which have been judiciously used in the permanen
betterment of a road, represent "*capital invested by the stock
holders,*" as truly as money which they paid into the treasury o
the company in discharge of their stock subscription.

This Court has held that in ascertaining the value of
road, upon which value "the company is entitled to ask a fai
return," it is proper to consider, not only the original cost o

construction, but also "*the amount expended in permanent improvements.*"

169 U. S , pp. 546, 547, Smyth et al. v. Ames et al.

The earnings of the Atlanta & West Point Railroad, which, instead of being distributed as dividends among the stockholders, were "expended in permanent improvements," may, therefore, be legitimately considered as entering into the value of the road upon which the company is entitled to a fair return.

Again: In the case last cited, this Court held that "the *present*, as compared with the *original* cost of construction" may be considered. The "*present*" cost is represented by the "original" cost plus "the amount expended in permanent improvements;" and therefore in considering the "*present*" cost of the Atlanta & West Point Railroad, its stockholders are entitled to a return upon that part of the capital which is represented by so much of their earnings as were expended "in permanent improvements."

If the earnings of the Atlanta & West Point Railroad which have been expended "in permanent improvements" be considered, the stockholders of that company, instead of receiving a return of 12 per cent, as erroneously reported by the Commission, have received only 6 per cent upon the capital invested by them; and I submit that 6 per cent is not more than a fair return upon their investment, especially when we consider the extra-hazardous character of railway investments.

Railroads are at all times subject to disastrous losses resulting from failure of crops, or the prevalence of epidemics in the territories through which they run; their property seems to be peculiarly subject to destruction by storms and floods; and however well located a railroad may be, it is liable to be paralleled at any time by a competing line, constructed under a charter

which is granted by a general law, and at the instance of any one who may apply.

Appellees' line from New Orleans to La Grange is 425 miles long; of that mileage, however, the Atlanta & West Point R. R. Co. owns but 16 miles, *i. e.*, from West Point to La Grange. In other words, the Atlanta & West Point R. R. Co. does not own more than 1-26 of the entire line.

That part of the line between West Point and Montgomery—a distance of 89 miles—is owned by the Western Railway of Alabama; and the remainder of the line, *i. e.*, between Montgomery and New Orleans—a distance of 320 miles—is owned by the Louisville & Nashville R. R. Co.

The Commission reports that the Western Railway of Alabama paid a dividend of 2 per cent; but it does not report that the Louisville & Nashville R. R. Co. paid any dividend at all.

Trans., p. 37.

If the dividend paying qualities of a railway property are to control, the question in this case ought to be as to what dividends have been paid by the 425 miles of railway line which extends from New Orleans to La Grange; and the dividend paying qualities of the Atlanta & West Point R. R. Co., which does not own exceeding 1-26 of that line, ought not to be given an undue prominence.

XLVI.

The Capitalizations Per Mile of the Atlanta & West Point Railroad, and the Western Railway of Alabama, are Less than the Average Capitalization of all the Railroads in the United States.

The capitalization per mile of the Atlanta & West Point Railroad Company consists of:

Capital stock	$14,378 06
Funded debt	14,378 06
Total capitalization per mile	$28,756 12

Said capitalization represents the "present cost" per mile of said road.

Trans., p. 95.

The capitalization per mile of the Western Railway of Alabama consists of:

Capital stock	$22,539 00
Funded debt	11,593 00
Total capitalization per mile	$34,132 00

Said capitalization represents the "present cost" per mile of said road.

Trans, p. 96.

The average capitalization per mile of all the railroads of the United States as shown by the Annual Report of the Interstate Commerce Commission for the year ending June 30, 1895, is $63,206.06.

Trans, p. 98.

I submit that the fact that the capitalizations per mile of the Atlanta & West Point Railroad, and the Western Railway of Alabama, are so much less than the average capitalization per mile of the railroads of the United States, raises a presumption, at least, that the capitalizations of the Atlanta & West Point Railroad, and of the Western Railway of Alabama, contain no "watered" stock, or fraudulently issued bonds. Said presumption is strengthened by the testimony of the President of said companies to the effect that it would cost from $30,000 to $35,000 per mile at the present time, to duplicate the Atlanta & West Point Railroad, and the Western Railway of Alabama, including their terminals.

Trans., p. 98.

The Atlanta & West Point Railroad pays only 6 per cent per annum on its "present cost" of $28,756.12 per mile.

Trans., pp. 94, 95.

The Western Railway of Alabama pays less than 3 per cent per annum on its "present cost."

Trans., p. 96.

I submit that such returns upon the value of the property used by those companies for the benefit of the public, are not unreasonably high; but, on the contrary, are reasonably low.

XLVII.

The Percentage of Operating Expenses to Earnings of the Atlanta & West Point Railroad, and of the Western Railway of Alabama, is Less than the Average of All the Railroads in the United States.

The percentage of operating expenses to earnings from operations for the year ending June 30, 1895, was:

On the Atlanta & West Point Railroad.....58.43 per cent
On the Western Railway of Alabama..... .....66.13 per cent
On all the roads in the United States.....67.48 per cent
Trans., p. 37.

I submit that the fact that the percentage of operating expenses of the Atlanta & West Point Railroad, and of the Western Railway of Alabama, is less than the average of all the other railroads in the United States, raises a presumption, at least, that the Atlanta & West Point Railroad, and the Western Railway of Alabama, are operated honestly and economically; that no extravagant salaries are paid to officers; and that no extravagant prices are paid for materials or supplies.

Said presumption is strengthened by the testimony of the President of said companies, who states said roads are operated honestly, skillfully, and economically.
Trans., p. 97.

The schedule of rates taken as a whole may be very high, and yet the operations of a railroad may be conducted so dishonestly, unskillfully, or extravagantly, that the expenses absorb the earnings, and leave nothing for dividends.

Or, as in the case at bar, the schedule of rates taken as a whole may be reasonably low, and yet the operations of a railroad may be conducted with such skill, honesty, and economy, that after paying all expenses, and fixed charges, there is a surplus left, sufficient to pay a dividend to stockholders.

XLVIII.

The Appellees' Rates from New Orleans to La Grange Do Not Include a Charge for Service Not Rendered.

Appellant's counsel, in the Circuit Court, contended that as appellees' rates from New Orleans to La Grange are equal to rates from New Orleans to Atlanta, and back to La Grange; and as New Orleans-La Grange freight is not carried to Atlanta, and then back to La Grange; but is delivered at La Grange; the appellees collect a charge for service from La Grange to Atlanta, and back to La Grange, when no such service is, in fact, rendered.

Counsel is mistaken in asserting that appellees collect a charge for service from La Grange to Atlanta, or from Atlanta back to La Grange.

New Orleans-La Grange freight is carried under through bills of lading, which, of course, specify La Grange as the point of delivery. It is thoroughly understood by all parties, that New Orleans-La Grange freight is to be delivered at La Grange, and that it is not to be carried to Atlanta and then back to La Grange.

The appellees' charge is made for carrying freight from New Orleans to La Grange, a distance of 425 miles; and appellees insist that said charge is not only reasonably low for the service

actually rendered; but lower than it would be if distance could control, and the rates could be based on Montgomery.

Appellees so adjust their rates from New Orleans to La Grange that said rates will not exceed the rates to Atlanta, and the rates thence back to La Grange; but this is done, not because appellees charge for service to Atlanta, and back to La Grange; but because, by reason of the competition of the Illinois Central Railroad, and the Southern Railway, appellees' charge for service actually rendered from New Orleans to La Grange (425 miles) cannot be made higher than their competitors' rates to Atlanta, and the local rates thence to La Grange.

XLIX.

Combination Rates are Just and Reasonable in and of Themselves.

Combination rates, as they are termed, are made upon a basis or method by which rates to noncompetitive points are arrived at by adding to competitive rates prevailing at the nearest competitive point, reasonable local rates from such competitive point to the noncompetitive points in its vicinity. And I insist that such rates are just and reasonable.

In the case of A. T. & S. F. R. R. v. D. & N. O. R. R., 110 U. S., p. 684, this Court held that at common law a railroad company is not bound to carry beyond its own line; and it has been repeatedly held at Circuit that there is nothing in the Act to Regulate Commerce to compel connecting railroads to form through routes, or to join in making through rates.

37 Fed. Rep., 572, K. & I. Bridge Co. v. L. & N. R. R. Co.

41 Fed. Rep., 563, L. R. & M. R. Co. v. St. L., I. M. & S. Ry. Co.

51 Fed. Rep., 474, 475, O. S. L. & U. N. Ry. Co. v. N. P. R. Co.

52 Fed. Rep., 915, C. & N. W. Ry. Co. v. Osborne.

59 Fed. Rep., 402, 403, L. R. & M. R. Co. v. St. L. I. M. & S. Ry. Co.

63 Fed. Rep., 778, 779, L. R. & M. R. Co. v. St. L. & S. W. Ry. Co.

65 Fed. Rep., 41, St. Louis Drayage Co. v. L. & N. R. R. Co.

86 Fed. Rep., 419, Gulf C. & S. F. Ry. Co. v. Miami S. S. Co.

88 Fed. Rep., 662, Southern Indiana Exp. Co. v. U. S. Exp. Co.

93 Fed. Rep., p. 92, I. C. C. v. W. & A. R. R. Co., et al.

The Louisville & Nashville Railroad is under no legal obligation to issue a bill of lading, or to quote a rate, from New Orleans to La Grange; because La Grange is not on its line.

When freight is shipped from New Orleans, consigned to La Grange, the Louisville & Nashville Railroad Company is bound to receive it; carry it to Montgomery; and there deliver it to the next carrier in the route; but it has the right to charge on such freight its reasonable local rate from New Orleans to Montgomery.

The carriage service which is rendered by the Louisville & Nashville Railroad Company in the transportation of freight from New Orleans, consigned to La Grange, is substantially the same as the carriage service rendered by it in the transportation of freight shipped from New Orleans consigned to Montgomery.

In each case, that company receives the freight at New Orleans, and carries it to Montgomery. If the freight be consigned to Montgomery, the company delivers it to the consignee at the company's depot there; while if the freight be consigned to La Grange, the company delivers it to the next carrier in the route.

The carriage service rendered by the Louisville & Nashville Railroad Company being substantially the same, it has the right to charge substantially the same rate, whether the freight be consigned to Montgomery, or to La Grange.

On the other hand, the Western Railway of Alabama, and the Atlanta & West Point Railroad, have the right to refuse to recognize a through bill of lading issued from New Orleans; because it is not a point on their line.

When freight is shipped from New Orleans, consigned to La Grange, they are bound to receive it at Montgomery; carry it to La Grange; and there deliver it to the consignee; but they have the right to charge on such freight their reasonable local rate from Montgomery to La Grange.

110 U. S., 684, A. T. &. S. F. R. R. v. D. & N. O. R. R.

The carriage service which is rendered by them in the transportation of freight shipped from New Orleans, consigned to La Grange, is substantially the same as the carriage service rendered by them in the transportation of freight which originates at Montgomery, consigned to La Grange. If the freight be shipped from New Orleans, they receive it from the Louisville & Nashville Railroad; while if the freight originates at Montgomery, they receive it from the consignee; and in either case they carry the freight to La Grange, on the same train, and deliver it to the consignee.

The carriage service rendered by them being substantially

the same, they have the right to charge substantially the same rate whether the freight be shipped from New Orleans, or originates at Montgomery.

If the Louisville & Nashville Railroad Company should insist upon charging its reasonable local rate from New Orleans to Montgomery, and the Western Railway of Alabama and the Atlanta & West Point Railroad should insist upon charging their reasonable local rate from Montgomery to La Grange, the sum of those locals would be more than the rates which appellees now charge from New Orleans to La Grange.

Trans., pp. 10, 11, 118, 119.

The mere fact that the Louisville & Nashville Railroad, the Western Railway of Alabama, and the Atlanta & West Point Railroad, have endeavored to accommodate the public at La Grange by joining in through rates, and recognizing through bills of lading, which the public have no right to require as a matter of law, furnishes no reason for adjudging the through rates to be unreasonably high; especially as they are less than they would be if made by combining the reasonable local rates which those roads would have respectively charged, if such through rates had not been agreed upon, and such through bills of lading had not been recognized. If the local rates charged by those roads for transportation over their respective lines are just and reasonable, through rates *which are less* than a combination of said local rates must themselves be just and reasonable.

Any other view of this question will force the Southern railroads to abandon the system of through rates, and through bills of lading, in order to be allowed to charge their own reasonable local rates.

Such a course would not result in any decrease in the rates between different points.

On the contrary, it would result in an increase of charge; because it would force the carriers to return to the mode of doing business which prevailed before the present system of through rates, and through bills of lading was adopted. In former times, a person doing business at New Orleans, who wished to ship to La Grange, would consign the shipment in the care of a commission merchant at Montgomery. The total charges on such a shipment would be made up, of the local rate from New Orleans to Montgomery; the commission merchant's factorage charge at Montgomery; and the local rate of the Western Railway of Alabama, and the Atlanta & West Point Railroad from Montgomery to La Grange. In a word, the total charge would exceed the present through rate, by the excess of the sum of the local rates over the present through rates, and also by the amount of the commission merchant's factorage charge at Montgomery; and the public would be deprived of the convenience of through rates, and through bills of lading.

In Minneapolis & St. Louis R. Co. v. Minnesota, 186 U. S., p, 259, it was contended "that the sum of two reasonable local rates cannot be unreasonable," as a through rate; but it is wholly unnecessary for me to contend for that proposition in this case. My contention here is that a through rate *which is less* than the sum of two or more reasonable local rates cannot be unreasonable; especially where it does not exceed a low competitive rate (as from New Orleans to Atlanta), by more than a reasonable local rate (as from Atlanta to La Grange).

Minneapolis & St. Louis R. Co. v. Minnesota, 186 U S., p. 259.

L.

COMBINATION RATES ARE NOT PECULIAR TO THE SOUTH.

In its Eleventh Annual Report the Commission says:

"We have before us at the present time a complaint which alleges that the rate from Chicago, Ill., to Kearney, Neb., is discriminating and unlawful. The rate is made in this way: There is an interstate rate from Chicago to Omaha. The rate from Omaha to Kearney is fixed by the Railroad Commission of the State of Nebraska. The through rate from Chicago to Kearney is made by adding to the through rate to Omaha, the local rate from Omaha to Kearney. Merchandise is transported by continuous shipment upon through bills of lading from Chicago to Kearney at this rate." . . . "We might order a reduction of the whole rate, *but we could not determine how that reduction should be shared by the different carriers.* If the carriers refuse to agree about that, *it is difficult to see how the order could be enforced.* Clearly, *to make and enforce such an order we must have power to determine the divisions of this through rate between the different roads making up the joint line.*

"Kearney is but one of thousands of places to which the through rate is made upon this same plan. A large part of interstate rates are joint rates, in reference to which the same thing would be true."

11 Ann. Rep., I. C. C. (1897), p. 27.
Trans., p. 274.

Through rates from Boston, New York, Philadelphia, and Baltimore to points west of Chicago, and to points west of the Mississippi River, are combination rates, made by adding rates

from Boston, New York, etc., to the Mississippi River, to rates from said river to points west thereof.

Trans., pp. 115, 116.

Through rates from points east of the Missouri River to points west of that river, are, in many cases, combination rates, made by adding rates from points of shipment to said river, to rates from said river to points of destination west thereof.

Trans., p. 116.

Rates from points north of the Ohio River, to points south of said river, are, to a very large extent, combination rates, made by adding rates from points of shipment to said river, to rates from said river to points of destination south thereof.

Trans., p. 116.

Rates from points east of the Mississippi River, to points in Texas and Arkansas, are, to a very large extent, combination rates, made by adding rates from points of shipment to said river to rates from said river to destination.

Trans., p 116.

LI.

The Principles upon Which Combination Rates are Made.

There are three principles upon which combination rates are made.

First: That all rates should increase in proportion to distance, if competition will permit.

Second: That where competition conflicts with distance, competition must control.

Third: That those cities, which by reason of their strategetical position can command competitive rates, are entitled to the advantage of their location.

The Commission not only concedes that all rates should be constructed according to distance, but it insists that where distance and competition conflict, distance should control; and that railroad companies have no right to recognize the strategetical advantages, which competitive places enjoy, unless the railroads reduce all of their noncompetitive rates to the level of their competitive rates.

Suppose the line A–B–C to represent a railroad. The Commission and the appellees agree that in the absence of competition, the rates from A to C should not be less than the rates from A to B; because, the distance from A to C is greater than the distance from A to B.

If C be a city, whose strategetical position is such as to enable it to command competitive rates, which are less than might reasonably be charged from A to C, in the absence of competition, the appellees contend that they have the right to accept the competitive rates prevailing at C, provided they yield something more than the additional cost of moving that traffic, and subserve the public interest; and that the fact that they accept such rates at C, as competition at that place may force them to accept, furnishes no reason why they should be compelled to accept as low rates at B, where no competition whatever exists.

On the other hand, the Commission contends that notwithstanding the competition at C may compel the appellees to ac-

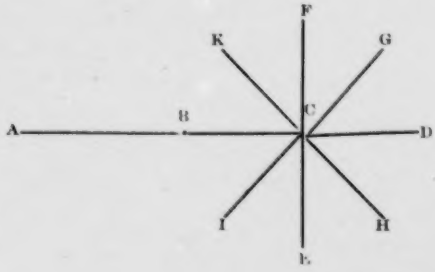
cept less rates from A to C, than might be reasonably charged in the absence of competition, they shall not do so, unless they accept equally low rates at B; though there may be no competition whatever at that point.

According to the contention of the Commission, a railroad in accepting lower rates to a competitive point than might otherwise be reasonably charged, must do so under penalty of reducing all of its intermediate noncompetitive rates to the level of the competitive rates beyond.

As there is no such competition at B as at C the appellees contend that rates from A to B should be constructed according to distance, *i. e.*, that the charge should be reasonable, considering the length of the haul. It may be, however, that the competitive rates from A to C are so low, and B may be located so near to C, that a merchant living at B would find it to his interest to pay rates which are equal to the competitive rates from A to C, added to the local rates from C back to B, rather than pay the rates from A to B constructed upon a distance basis. By that plan, he would get precisely the same benefit of the competition which exists at C as though he were doing business at C; and he would only pay, in addition thereto, rates equal to reasonable local rates from C to B.

In other words, the merchant rather than pay the rates from A to B, constructed upon a distance basis, *would himself use a combination rate* by having his goods shipped from A to C, under the competitive rates, and from C back to B, under the local rates, as the La Grange merchants would do, if the rates charged by the appellees from New Orleans via Atlanta to La Grange exceeded the competitive rate to Atlanta, added to the local rate from Atlanta back to La Grange. A railroad owning the line from A to C, and knowing that a merchant at B can avail

himself of a combination of rates such as I have just referred to, accepts rates, which are not higher than can be obtained by such a combination, and saves the merchant at B the trouble and delay of shipping his goods from A to C, and thence back to B; just as the appellees save the La Grange merchants the trouble and delay of shipping their goods from New Orleans to Atlanta, and thence back to La Grange. In other words, the railroad gives to the merchant at B, although it is a noncompetitive point, all the benefit of the competition that exists at C; and instead of requiring him to ship his goods to C, and thence back to B, it delivers them to him direct at B; and at a rate less than the rate from A to B would be, if constructed upon a distance basis.



In the diagram first set forth in this section, I have supposed that the noncompetitive point B is located between A, and the competitive point C. It is manifest, however, that the noncompetitive point may be located beyond the competitive point C; as, for instance, at the point D, or E, or F, or G, or H, or I, or K. It is wholly immaterial whether the noncompetitive point be located between A and C, or beyond C. It gets all that it is entitled to when it is allowed the full benefit of the competition that exists at C, and is only required to pay, in addition to the competitive rates prevailing at C, rates equal to reasonably low local rates from C to destination.

In this case, the local rates from Atlanta to La Grange are reasonably low.

Trans., pp. 385, 386, 391, 392, 370, 276, 381, 382.

The Commission as well as the appellees agree that noncompetitive points should have all the benefit of such competition as may exist at the nearest competitive point. The precise point of difference between the Commission and the appellees is, that the Commission contends that noncompetitive points shall have precisely the same rates as if they were located exactly where the competitive point is located; while the appellees contend that the noncompetitive points should pay in addition, rates equal to reasonably low local rates from the competitive point, to destination.

In the case at bar, if La Grange desires to have its rates from New Orleans constructed upon a distance basis, the appellees would be perfectly willing to so construct them; because as shown above, the rates from New Orleans to Montgomery, added to the rates from Montgomery to La Grange (which would be constructing the La Grange rates according to distance), would be higher than the rates which the appellees now charge from New Orleans to La Grange.

Trans., p. 197.

La Grange, however, is not content with rates constructed on a distance basis. It not only claims the benefit of the competitive rates which prevail at Atlanta, but it insists upon having the benefit of those rates precisely as if La Grange were located exactly where Atlanta is located; and it refuses to pay anything whatever in addition to those rates.

If it be held that Southern railroads cannot accept rates which competition forces upon them at such points as Atlanta, except at

the peril of reducing their rates at intermediate noncompetitive stations to the same level, its manifest tendency will be to deter railroad companies in Southern territory from engaging in competition; and it will have more effect toward stifling railroad competition in the South than any contract, combination or conspiracy denounced by the Anti-Trust Act of Congress.

LII.

The Combination Rates which Were Approved in the Alabama Midland Case.

There were a number of combination rates which the Commission declared to be illegal, but which were approved by the Circuit Court, by the Circuit Court of Appeals, and by this Court, in the Alabama Midland case.

In that case, Montgomery was the competitive point, and Troy the noncompetitive point.

1. On cotton shipped from Troy to New Orleans, there was a combination rate, equal to a rate made by adding the full local rate from Troy to Montgomery, to the competitive rate from Montgomery to New Orleans.

2. On class goods shipped from Ohio River points, there was a combination rate, equal to a rate made by adding to the competitive rate from the Ohio River to Montgomery, the full local rate from Montgomery to Troy.

3. On class goods shipped from New York, over the Alabama Midland Railway, there was a combination rate, equal to a rate

made by adding to the competitive rate from New York to Montgomery, *the full local rate from Montgomery back to Troy.*

4 I. C. Rep., p. 348, Board of Trade of Troy v. Alabama Midland Ry. Co.

69 Fed. Rep., p. 227, I. C. C. v. Alabama Midland Ry. Co.

74 Fed. Rep., 715, I. C. C. v. Alabama Midland Ry. Co.

168 U. S., p. 144, I. C. C. v. Alabama Midland Ry. Co.

It will be noticed that in the case of class goods shipped from New York over the Alabama Midland Railway, the combination rate was equal to a rate made by adding to the competitive rate, from New York to Montgomery, the full local rate *from Montgomery back to Troy*: just as in this case the combination rate is equal to a rate made by adding to the competitive rate from New Orleans to Atlanta, the local rate from Atlanta back to La Grange.

LIII.

The Combination Rates which Were Approved in the Georgia Railroad Commission Cases.

In what are known as the Georgia Railroad Commission cases, there were a number of combination rates which the Commission declared to be illegal, but which were approved by the Circuit Court, and by the Circuit Court of Appeals.

1. In one of those cases, there were combination rates equal to rates made by adding to the competitive rates from Cincinnati to Chattanooga, the full local rates from Chattanooga to certain local stations on the Western & Atlantic Railroad, between Chat-

tanooga and Atlanta; which combination rates were higher than the rates from Cincinnati to Atlanta.

2. In another of said cases, there were combination rates equal to rates made by adding to the competitive rates from New York, etc., to Atlanta, the full local rates from Atlanta to certain local stations on the Atlanta & West Point Railroad, between Atlanta and West Point. In the same case there were other combination rates equal to rates made by adding to the competitive rates from New York, etc., to Opelika, on the first six classes, the full local rates of the Western Railway of Alabama *from Opelika back to West Point.*

3. In another of said cases, there were combination rates equal to rates made by adding to the competitive rates from New York, etc , to Augusta, the full local rates of the Georgia Railroad from Augusta to certain stations on that railroad, between Augusta and Atlanta.

In the same case, there were other combination rates equal to rates made by adding to the competitive rates from New York, etc., to Atlanta, on classes 1, 2, 3, A and B, the full local rates of the Georgia Railroad *from Atlanta back to Covington.*

In the same case, there were other combination rates equal to rates made by adding to the competitive rates from New York, etc., to Atlanta, on classes 1, 2, 3, 4, A, B and H, the full local rates of the Georgia Railroad *from Atlanta back to Conyers.*

In the same case, there were other combination rates equal to rates made by adding to the competitive rates from New York, etc., to Atlanta, on all of the classes except C, D and F, the full local rates of the Georgia Railroad, *from Atlanta back to Stone Mountain.*

4 I. C. Rep., p. 120, Trammell et al. v. Clyde S. S. Co.
88 Fed. Rep., p. 186, I. C. C. v. W. & A. R. R. Co. et al.
93 Fed. Rep., p. 83, I. C. C. v. W. & A. R. R. Co. et al.

The decree of the Circuit Court of Appeals in that case was affirmed by this Court. The case being styled in this Court:

I. C. C. v. Clyde S. S. Co., 181 U. S. p. 29.

It will be noticed that in the case of West Point, Covington, Conyers, and Stone Mountain, the combination rates were equal to rates made by adding to the competitive rates from New York, etc., to Opelika, or to Atlanta, respectively, the full local rates of the Western Railway of Alabama from Opelika *back to West Point*, or the full local rates of the Georgia Railroad *from Atlanta back to Covington, Conyers and Stone Mountain*, just as in this case, the combination rates are equal to rates made by adding to the competitive rates from New Orleans to Atlanta, the local rates from Atlanta back to La Grange.

In the Georgia Railroad Commission cases, the Circuit Court of Appeals, in discussing the combination rates involved in those cases, said:

"Therefore, in fixing the rates to these intermediate points, the through rate to that competitive point, which combined with the local rate from the competitive point to the point of destination, will give the lowest through rate to the noncompetitive point, contro's. As the noncompetitive point thus gets the benefit of the lowest rate to any of the neighboring competitive points; and as the carriage of the competitive traffic to the respective competitive points is remunerating to the carriers to an extent that more than pays the expense of moving the competitive traffic, it is difficult to perceive how the noncompetitive points are subject to any undue or unreasonable prejudice or disadvantage by this scheme of rate making."

93 Fed. Rep., p. 92, I C. C. v. W. & A. R. R. Co. et al.

LIV.

The Combination Rates Which Were Approved in the Hampton Case.

In the case of I. C. C. v. N. C. & St. L. Ry. et al., known as the Hampton case, combination rates were approved by the Hon. James W. Locke, presiding in the Circuit Court of the United States for the Southern District of Florida. The combination rates were equal to rates made by adding to the competitive rates from St Louis, Nashville, or Chattanooga to Palatka, the local rates *from Palatka back to Hampton;* just as in this case the combination rates from New Orleans to La Grange are equal to rates made by adding to the competitive rates from New Orleans to Atlanta, the local rates from Atlanta back to La Grange. The case was decided by Judge Locke on the 16th day of April, 1902; but no written opinion was handed down.

LV.

The "Social Circle" Case Did Not Decide that Combination Rates Were Unreasonable.

In the Circuit Court, counsel for appellant referred to what is known as the "Social Circle Case," as holding that "combination rates" are unreasonable.

In the "Social Circle" case, it was held that where two or more roads join in making combination through rates on interstate traffic, such roads constitute but one "line;" and that such "line" is subject to the Act to Regulate Commerce, though one of the roads may be wholly within a single State. But it was not even intimated in that case, that a "combination rate" charged by such a line to a local station on one of the roads con-

stituting the line, is unreasonable, merely because the delivering road is allowed its local rate as its proportion of the joint through rate.

162 U. S., pp. 184, 191, 192, C. N. O. & T. P. Ry. v. I. C. C.

175 U. S., pp. 662, 672, 673, Louisville, etc., R. R. Co. v. Behlmer.

The "Social Circle" case was cited by counsel for the Commission in his argument in the Circuit Court of Appeals in the Georgia Railroad Commission cases, as holding that combination rates are unreasonable and unlawful. That Court decided the "Social Circle" case, and of course was familiar with what was held in that case; and that the Court did not consider the "Social Circle" case as holding that combination rates are unreasonable, is evident from its decision in the Georgia Railroad Commission cases.

LVI.

The "Augusta Southern" Case Did Not Decide that Combination Rates Are Unreasonable.

Counsel for appellant, in the Circuit Court, referred to the Augusta Southern Railroad case, 74 Fed. Rep., p. 527. The legality of "combination rates" was not discussed by the Court in that case. The Wrightsville & Tennille Railroad, which was one of the roads involved in that case, *was not the delivering carrier*. It was an intermediate carrier, and its service was, in the strictest sense, "through" service. It received the cars at one end of its line, and surrendered them at the other end; without incurring any of the expense or delay incident to delivery at local stations.

My information is that the rate discussed by the Court in that case was on phosphate from Charleston, via Augusta, and Tennille, to Oconee River landings.

The total rate was		$4 20
It was divided as follows:		
To the roads running from Charleston to Tennille, 326 miles (5½ mills per mile)	$1 80	
To the Wrightsville & Tennille Railroad, 36 miles (22 mills per mile)	80	
To the boats on the Oconee River	1 60	—$4 20
The proportion of the Wrightsville & Tennille Railroad, added to that of the boats, amounted to	2 40	

The Wrightsville & Tennille Railroad had for a long period of time joined with the Augusta Southern Railroad, as well as with the Central Railroad, in making through rates on phosphate; and it had accepted from each of them 80 cents as its reasonable proportion of the through rate.

Its local rate from Wrightsville to Tennille was $1.16. It withdrew from its connection with the Augusta Southern Railroad, and proposed to charge the Augusta Southern its local rate of $1.16, which, added to the boat's proportion of $1.60, made the total proportion from Tennille to the Oconee River landings $2.76, instead of $2.40, as it had previously been. The Court held that as $2.40 had been previously accepted from the Augusta Southern Railroad as reasonable, and as it was still accepted from the Central Railroad as reasonable, the presumption was that the increased rate of $2.76 was unreasonable as a charge against the Augusta Southern Railroad—especially as the former charge of $2.40 was continued to be accepted from the Central Railroad.

The question in that case was as to the right of a railroad to discriminate between two of its connections as to the proportion which it would demand out of a through rate. *There was no question as to whether the through rate was reasonable as between the through line as a shipper.*

In the case at bar, counsel contends that the Atlanta & West Point Railroad shall be compelled to accept substantially the same rate per ton per mile on the short haul, of 16 miles between West Point and La Grange, as competition forces the through line to accept on the long haul of 495 miles from New Orleans to Atlanta. But in the Augusta Southern case, the Court allowed the Wrightsville & Tennille Railroad to continue to charge its former rate of 80 cents for 36 miles, which rate was four times as much per ton per mile as was charged by the connecting roads from Charleston to Tennille; and the only effect of the order in that case was to prohibit the Wrightsville & Tennille Railroad from increasing its proportion from 80 cents to $1.16, as against the Augusta Southern Railroad, while it continued to accept 80 cents from the Central Railroad.

The "Augusta Southern" case was cited by counsel for the Commission, in his argument in the Circuit Court of Appeals in the Georgia Railroad Commission cases, as holding that combination rates are unreasonable and unlawful. Judge Pardee participated in the decision of the "Augusta Southern" case, and, of course, was familiar with what was held in that case; and that he did not consider the "Augusta Southern" case as holding that combination rates are unreasonable, is evident from his concurring in the opinion of the Circuit Court of Appeals in the Georgia Railroad Commission cases.

LVII.

The "Behlmer" Case is Not an Authority Against the Reasonableness of Combination Rates.

Counsel for appellant, in the Circuit Court, referred to the opinion of the majority of the Fourth Circuit Court of Appeals in the case of Behlmer v. Louisville & Nashville Railroad Company et al., 83 Fed. Rep., 898.

The case was decided in the Court of Appeals by a divided court. It was taken thence to this Court, where it was reversed.

175 U. S. 648, Louisville, etc., R. R. Co. v. Behlmer.

LVIII.

"Basing Points" or "Trade Centers" in the South.

Counsel for appellant, in the Circuit Court, made a vigorous attack upon what he calls the "trade center" or "basing point" system of rate-making, which has been used in the Southern States for many years. Counsel quoted the following description of the system as given by Commissioner Walker:

"Certain large cities and towns situated on the coast, at interior river points, and at railroad junctions, are *called* competitive, and receive quite low rates on all interstate traffic; all other stations are *called* local, and are charged much higher rates. The rates to local points are made by adding to the competitive rates at the nearest competitive point the local rate from that point."

1 I. C. Rep , p. 631, Harwell v. C. & W. R. R.

It will be noticed that Mr. Walker says that basing points are "*called*" competitive, as if they were so designated as a matter of preference or favor; and that he speaks of them as "*receiving*" quite low rates, as though such rates were given to them by the carriers as a matter of favoritism or partiality.

Judge Cooley was quoted by counsel in the Circuit Court as saying that the pre-eminence of such trade centers in the Southern territory "is peculiar, and has probably been increased by the *concessions* in rates which the railroads have made to them, while making less *concessions* or none at all to less important stations." . . . "The prevalence of such ideas, and the acting upon them in making freight tariffs, gives to railroad managers a power of determining within certain limits what towns shall be trade centers, and what their relative advantages."

1 I. C. Rep., p. 278, In Re Southern Ry. & Steamship Ass'n.

There may be a few mere "railroad junctions" which, owing to the ignorance or corruption of certain railroad officials, have been arbitrarily "called" competitive points, and which "receive" certain arbitrary "concessions" in rates. There may also be a few strictly local stations, which are not even "railroad junctions," where arbitrary and unfair "concessions" in rates have been made, by certain corrupt railroad officials, to enhance the value of property owned at such stations by said officials, or by their relatives or friends.

All such arbitrarily created so called "trade centers," or "basing points," if any such exist, are the offspring of ignorance or corruption, and justly deserve all that the Commission has said in denunciation of them.

The error of the Commission consists in failing to distinguish

between those "trade centers," or "basing points," which may have been arbitrarily created by certain railroad officials, at certain local stations, or at certain railroad junctions, and those "trade centers," or "basing points," which are situated on the sea coast, or other navigable water course, or which, though situated in the interior, have by reason of their peculiar geographical situation, become points of intersection of numerous rival railroads, or which, though situated at the intersection of only two railroads, have become competitive points by reason of certain exceptional conditions which happen to exist at those points, and which are not to be found at the ordinary local stations, or even at ordinary "railroad junctions."

Norfolk, Richmond, Wilmington, Charleston, Port Royal, Savannah, Brunswick, Augusta, Macon, Mobile, Montgomery, Columbus, Eufaula, etc, are illustrations of "trade centers," or "basing points," which are situated on the sea coast, or other navigable water course.

Competition between numerous water craft enabled them to command exceptionally low rates of transportation, long before a mile of railroad existed on the face of the earth. It is manifestly erroneous to say that they have been arbitrarily favored, with exceptionally low rates, by the ignorance or corruption of railroad officials. Their rates were always very much lower than those of adjacent interior towns.

When railroads were first constructed to those "trade centers," or "basing points," they found them in the enjoyment of exceptionally low rates, as compared with adjacent interior towns; and they simply recognized the rate situation as they found it.

It was impossible for the railroad officials to have increased the rates to those "trade centers," or "basing points;" because

the same water craft that had reduced the rates in the first instance would have reduced them again, if the railroad officials had attempted to increase them.

Before any railroads were built in Georgia, traffic from New York and other North Atlantic ports, as well as traffic from New Orleans and other Western points, was shipped by water to Charleston, Savannah, and Augusta.

Certain competitive through rates were charged by the ships and boats from New York and other North Atlantic ports, or from New Orleans and other Western points, to Charleston, Savannah, and Augusta; and from those "trade centers," or "basing points," the goods were hauled by wagons to interior towns in Georgia, such as La Grange.

Charleston, Savannah, and Augusta were important "trade centers" in those early days, and their prominence over interior towns, such as La Grange, was far greater then than now. La Grange was then, as now, a local, noncompetitive point.

The rates from New York and other North Atlantic ports, and from New Orleans and other Western points, to La Grange, were then, as now, "based" on the through competitive rates from New York and other North Atlantic ports, or from New Orleans and other Western points, to some "basing point" or "trade center" in South Carolina or Georgia, to which were added wagon rates from those "trade centers," or "basing points," to La Grange.

We see, therefore, that Charleston, Savannah, and Augusta, are natural "basing points" for making rates to La Grange; because they are the nearest natural "trade centers" to that point.

We see, also, that Charleston, Savannah, and Augusta are "basing points," or "trade centers," because they are situated on navigable water courses, and in the midst of large and fertile territories which are dependent upon them for commercial facilities; and not because of railroad favoritism.

It may be contended by counsel for the appellant that the interior towns, such as La Grange, are entitled to participate in the benefit which has resulted from the construction of railroads; and that they ought not to be remitted to the condition which existed in the days of ox-carts and wagons. I agree that the interior towns are as much entitled as those which are situated upon water courses to participate in the benefit which has resulted from the construction of the railway system; but I contend that they have been benefited by that system; and even more, in proportion, than the cities situated upon water courses. Instead of paying the high rates formerly charged by wagons, they now have a very much better and more expeditious service by railway. The rates charged by railways are not only much less than those formerly charged by wagons, but, in Georgia, they are regulated by the Georgia Railroad Commission, which is organized under a law which requires that the commissioners shall not "in any way, be the holders of any railroad stocks or bonds, or be the agent or employe of any railroad company, or have any interest in any way in any railroad."

The interior towns, such as La Grange, are not content, however, with having the benefit of all the competition that exists at the "basing points," or "trade centers," with the addition of only such local railroad rates as the Georgia Railroad Commission may fix as reasonable; but they insist upon having *precisely* the same rates as if they were located *exactly* where the "basing points," or "trade centers," are located.

There are in the South, a few "basing points," or "trade

centers," which are not situated on the sea coast, or other navigable water course, and which have become competitive points by reason of their peculiar geographical location, which has caused them to be made points of intersection of numerous rival railroads. Atlanta and Birmingham are illustrations of this class of "basing points," or "trade centers."

It is, of course, impossible to explain why large cities should have grown up at the exact points where Atlanta, and Birmingham, are located, instead of at points 50 or 100 miles distant from them. It is also impossible to explain why so many railroads have been constructed to Atlanta, and Birmingham, instead of being constructed to other points, which, to all appearances, would have presented as many advantages as are offered by Atlanta, or Birmingham. But the fact is, as we all know, that those two cities have become points of intersection of numerous rival railroads; and that those railroads, in their strife to share in the transportation of the large traffic of those cities, have reduced the rates to and from them, until the rates are almost as low as those which obtain to and from cities located upon navigable water courses.

It may be argued that it was wrong for so many railroads to congregate anywhere; and especially wrong to congregate at Atlanta, or Birmingham; or it may be argued that having congregated at Atlanta and Birmingham, the railroads ought to have kept the peace toward each other, and ought not to have indulged in those competitive rate wars which have so reduced the transportation charges at those points.

It is, in effect, contended by counsel for appellant that the prominence which has been obtained by Atlanta, and Birmingham, is due alone to railroad favoritism; and that if they had been treated like they should have been, they would today be like other railway stations in their vicinity. But Atlanta and

Birmingham were as prominent when the Act to Regulate Commerce was passed as they are now; and the question for this Court to decide is whether Congress intended by that act to deprive such places as Atlanta, and Birmingham, of their positions, and reduce them to the rank of mere local stations.

I submit that Congress never intended to interfere with the commercial advantages possessed by any city; whether those advantages were due to natural causes, such as location upon a water course, or to artificial causes, such as the aggregation of capital, the exhibition of business enterprise and sagacity; or even the accident of being selected as the point of intersection of numerous railways.

Congress does not require equality of rates in any case except where there is a similarity of circumstances and conditions. If the circumstances and conditions be substantially dissimilar, it is not the intention of Congress to inquire how the dissimilarity may have originally been created.

There is in commerce, as in politics, such a thing as the "status quo;" and we might as well question the right of the United States to Porto Rico, or the Philippines, as to question, at this day, the right of such places as Atlanta, and Birmingham, to the commercial prominence which they now possess; and which they have possessed for many years.

Opelika is not situated upon any water course, and it is the intersection of only two railways; but is affected by certain exceptional conditions which happen to exist at that point, and which are not to be found at ordinary local stations, or even at ordinary railroad junctions.

Mr. Lutz explains how it happened that Opelika takes substantially the same rates as Atlanta. He says:

"Until 1888, the rates to Opelika from all points were made of (by) combination either on Columbus or Montgomery. About the time the Interstate Commission Law went into effect, the Central of Georgia Railway and the Ocean Steamship companies being under one management and control, and leading direct from the eastern ports to Opelika controlled the making of rates from the east to that point, (and) decided that under the Interstate Commerce Law, the rates from the east to Opelika, should not be higher than to Birmingham, Alabama, (and) put such rates into effect. The Central of Georgia Railway also took the position that they could not charge higher rates from the west to Opelika, Ala., than were charged to Columbus, Georgia, (and) adopted and put into effect rates to Opelika the same as to Columbus."

. . . . . .

"The Atlanta & West Point Railroad and Western Railway of Alabama were forced by reason of these rates being put into effect by the Central of Georgia Railway, to meet the rates as made by the Central of Georgia Railway, or retire from the business."

Trans., p. 359.

The legality of Opelika, as a "basing point," or "trade center," was involved in one of the Georgia Railroad Commission cases referred to above, and upon that point, the Circuit Court of Appeals said:

"The Commission's report says that the present adjustment of rates to Atlanta is the outcome of severe competition between lines leading from the competing markets, like St. Louis, Baltimore, Cincinnati, etc., and, with some modifications occurring from time to time, has been in effect for a considerable period. While it makes no similar finding with reference to Opelika showing whether or not the adjustment of rates to that point is

the outcome of severe competition, either between carrier and carrier, or between market and market, its recitals of what the proof shows as to conditions there are to that effect, and the testimony of numerous credible witnesses is clear and pointed to the effect that the adjustment of rates to Opelika is the outcome of controlling competition."

93 Fed. Rep., p. 87, I. C. C. v. W. & A. R. R. Co. et al.

Again that Court said:

"The testimony of the witnesses and the report of the Commission show that Opelika is not situated on any water course, and is at the intersection of only two railways, but that it is affected by certain conditions which happen to exist at that point and which are not to be found at ordinary local stations or even at ordinary junctions. With its two railroads as terminal carriers, it is connected at comparatively short distances with numerous and extensive systems of rail and water carriage, which make it possible for freight to reach Opelika from the Northern and Eastern ports, and from Ohio river points by many different routes, the strong competition between which different carriers comes to a focus at Opelika."

93 Fed. Rep., p. 89, I. C. C. v. W. & A. R. R. Co. et al.

LIX.

"Basing Points" or "Trade Centers" in the North and West.

"Basing points," or "trade centers," are not confined to the South. Freight tariffs covering the traffic from the Eastern seaboard territory to Western points were, for many years, established under the rules and regulations of the associations then known as the Trunk Line, and Central Traffic associations. Un-

der agreements of several years' standing, it had been the custom of roads, forming by connections through lines from the seaboard to the West, to determine through rates from New York to Chicago, "and to adopt such rates as *the standard or basis* for the construction of tariffs from other Eastern cities, and points adjacent thereto, which are directly or indirectly in competition for Western business."

"For twenty years or more the rates from Boston to Western competitive points have been the same as from New York From Philadelphia and Baltimore, the rates are "agreed differentials"—less than New York—the Baltimore rates being also lower than Philadelphia rates."

The agreed rates and distances from New York to Chicago are taken as the standard, or 100 per cent. Through rates to the principal Western cities, towns and junction points in the territory above described, are computed at a percentage of the New York-Chicago rates, based generally on the relative mileage of such points to the Chicago mileage. For example, rates from New York to Indianapolis, Ind., are 93 per cent of the New York-Chicago rates; Cincinnati, O., 87 per cent; Columbus, O., 77 per cent; St. Louis, Mo., 116 per cent, etc. Thus the New York-Chicago rates being at all times applied as the basis, would, when changed, create relative changes in the rates to other Western points. In a similar manner the relation as to rates is maintained from the other Eastern cities. When the rates from New York to Western points are changed, like changes are made from Boston, Philadelphia, and Baltimore, and points receiving the same rates; the "differentials" as between the Eastern cities being at all times maintained.

Wholesale Prices, Wages and Transportation, Senate Rep., No. 1394, 2d Sess. 52 Con , Part I., pp. 429, 430.

And so with reference to through rates from Kansas and Ne-

braska points to the seaboard. "The through rates to the Eastern seaboard are generally made on the combination of the rates east and west of the Mississippi River."

Wholesale Prices, Wages and Transportation, Senate Rep., No. 1394, 2d Sess. 52 Con., Part I., p. 552.

The rates and distance from New York to Chicago are taken as the base in the territory between those cities, because of the water competition from Chicago to New York via the Lakes, the Erie Canal and the Hudson River; and that line of water transportation is the only practical water line between the northeastern sea coast and the Mississippi River. But the Southern territory is surrounded on the east and south by the Atlantic Ocean and the Gulf of Mexico; and on the west and north by the Mississippi and Ohio Rivers. *It is also penetrated by numerous rivers navigable by steamboats from the ocean for considerable distances into the interior.*

It is therefore impossible to adopt in the South any one set of rates, or any particular distance, as a standard for making rates for that entire territory. To illustrate: If it were attempted to take the distance, and the rates, from New York to New Orleans, as a standard or basis, and to fix the rates from New York to Norfolk, or from New York to Charleston, or from New York to Savannah, etc., as certain per cents of the rate from New York to New Orleans, such percentage rates could not be maintained like similar percentage rates are maintained between certain cities in the Trunk Line territory; because they would be cut, in almost every instance, either by the all-water lines, or by the rail and water lines.

That peculiar difficulties surround the rate situation in the South is conceded by the Commission, itself, in the following language:

"A study of the conditions under which railroad traffic in certain sections of the country has sprung up is necessary to an understanding of the difficulties which surround the subject. The territory bounded by the Ohio and Potomac on the north, and by the Mississippi on the west, presented to the Commission an opportunity, and also an occasion, for such a study. *The railroad business of that section has grown to be what it is in sharp competition with water carriers, who not only have had the ocean at their service, but by means of navigable streams were able to penetrate the interior in all directions.*"

First Annual Report Interstate Commission (1887), p. 16.

The only possible way by which the basing system employed in the Trunk Line territory could be made applicable in the Southern territory, would be to subject all carriers by water to the Act to Regulate Commerce, and to establish, by legislative enactment or otherwise, certain relative maximum *and minimum* rates to and from all of the principal points in the South; and then require all carriers, whether by rail, or by water, to maintain the rates so fixed.

LX.

The Second Section of the Act to Regulate Commerce Has No Application to This Case.

The second section of the Act to Regulate Commerce is:

"That if any common carrier subject to the provisions of this act shall, directly or indirectly, by any special rate, rebate, drawback, or other device, charge, demand, collect, or receive from any person or persons a greater or less compensation for any service rendered, or to be rendered, in the transportation of passengers or property subject to the provisions of this act, than it

charges, demands, collects, or receives from any other person or persons for doing for him or them a like and contemporaneous service in the transportation of a like kind of traffic, under substantially similar circumstances and conditions, such common carrier shall be deemed guilty of unjust discrimination, which is hereby prohibited and declared to be unlawful."

24 U. S. Stat. at Large, pp. 379, 380.

The second section was construed by this Court, in Wight v. U. S., 167 U. S., pp. 516, 518. In that case, a railroad company charged one shipper a higher rate than another shipper for the carriage of beer from the same place of shipment (Cincinnati) to the same destination (Pittsburg). The Court held that the phrase "under substantially similar circumstances and conditions," *as used in the second section*, refers to the matter of carriage, and does not include competition. The Court said that it was the purpose of *the second section* to enforce equality between shippers, and to prohibit "any rebate or other device by which two shippers, shipping over the same line, *the same distance*, under the same circumstances of carriage, are compelled to pay different prices therefor."

In other words, this Court construed the second section of our act as being the equivalent of what is known as the English "Equality Clause;" which is a clause of Section 90 of the English "Railway Clauses Act, 1845."

The English "Equality Clause" requires equality of charge in no case except where goods pass "*only* over the same portion of the line of railway under the same circumstances."

2 Ann. Rep., I. C. C. (1888), p. 89.

The English "Equality Clause" has no application where freight of one shipper, though carried over the same line, is carried a greater distance from a common point of departure than

the freight of another shipper. In such a case, the freight carried the greater distance would pass "over the same portion of the line" as the freight carried the lesser distance; but the freight carried the greater distance would also pass over an *additional* portion of the line; and, therefore, the two shipments would not pass "*only* over the same portion of the line."

Law Rep., 21 Q B. (1888), pp. 217, 218, L. & Y. Ry. Co. v. Greenwood.

It is evident that where goods pass "*only* over the same portion of the line," or between the *same* points of departure and arrival," there cannot be any substantial dissimilarity of circumstances and conditions, *so far as competition is concerned*. Because, whatever competition may exist on that portion of the line, affects all shippers equally. And if, by reason of such competition, a railroad company sees proper to accept certain rates from one shipper, it must, by the express terms of the "Equality Clause," accept the same rates from any other shipper, in respect of all goods of the same description, passing between the same points of departure and arrival.

The English "Equality Clause" did not apply either where the points of departure were different; or where the points of arrival were different; or where the distances over which the goods were carried were different.

Law Rep., 21 Q. B. (1888), pp. 217, 218, L. & Y. Ry. Co. v. Greenwood.

And so, this Court held that the *second section* of our act applies only where two or more shippers ship "over the same line, *the same distance*, under the same circumstances of carriage."

In the case at bar, goods destined to La Grange do not pass over the "same distance" as goods shipped to the longer distance points.

LXI.

The Third Section of the Act to Regulate Commerce Prohibits Only Such Preferences as Are Unjust or Unreasonable.

The third section of the Act to Regulate Commerce was modeled upon the second section of the English Railway and Canal Traffic Act of 1854, and upon Section 11 of the English Railway and Canal Traffic Act of 1873. For the convenience of the Court, I print in parallel columns so much of said sections as are material for the purpose:

UNDUE PREFERENCE CLAUSE	UNDUE PREFERENCE CLAUSE.
English Act.	*American Act.*
Sec. 2. Railway and Canal Traffic Act, 1854.—1 *Nev & Mac., p.* 2.	Sec. 3. Act to Regulate Commerce.
Sec. 11. Railway and Canal Traffic Act, 1873.—1 *Nev & Mac., p.* 11.	That it shall be unlawful for any common carrier subject to the provisions of this act to make or give any *undue* or *unreasonable* preference or advantage to any particular person, company, firm, corporation, or locality, or any particular description of traffic, in any respect whatsoever, or to subject any particular person, company, firm, corporation, or locality, or any particular description of traffic, to any *undue* or *unreasonable* prejudice or disadvantage in any respect whatsoever.—24 *U. S. Stat at Large, p.* 380.
. . . . And no such company shall make or give any *undue* or *unreasonable* preference or advantage to or in favor of any particular person or company, or any particular description of traffic, in any respect whatsoever, nor shall any such company subject any particular person or company, or any particular description of traffic, to any *undue* or *unreasonable* prejudice or disadvantage in any respect whatsoever.—1 *Nev. & Mac., pp.* 2–11.	

In the case of Interstate Commerce Commission v. Baltimore & Ohio Railroad Co., Mr. Justice Brown, speaking for this Court, said:

"It is not all discriminations and preferences that fall within the inhibition of the statute; *only such as are unjust or unreasonable*" . . . "Indeed, the possibility of just discriminations and reasonable preferences is recognized by these sections, in declaring what shall be deemed unjust."

145 U. S., pp. 276, 277, I. C. C. v. B. & O. R. R.

In the case of Interstate Commerce Commission v. Alabama Midland Railway Co., Judge Bruce said:

"The words 'any undue or unreasonable preference or advantage' plainly imply that every preference or advantage is not condemned, *but such, only, as are undue or unreasonable.*"

69 Fed. Rep., pp. 231, 232.

In the case of the Commercial Club of Omaha v. Chicago & N. R. Co., decided November 18, 1897, the Commission, speaking through Commissioner Knapp, said:

"It must be remembered that not every inequality in rates constitutes a violation of the law. *Discrimination is forbidden only when it is unjust. Preferences and prejudices are not prohibited unless they are undue.* The language of the statute implies that there may be discriminations which are not unjust and preferences which are not undue."

7 I. C. Rep., p. 404.

It goes without saying that where lower rates are charged to one city than to another, and those cities are competitors in a common territory, such disparity of rates constitutes a preference in favor of the one, and a prejudice or discrimination as against the other.

But the question still remains whether the preference, or prejudice, or discrimination, is *undue or unjust.*

DIAGRAM B.

In the above diagram, suppose A-C to represent a railroad owned by one company, and A-B to represent a railroad owned by a different company. Suppose B and C are cities which compete in the territory which lies between them. If the company owning the railroad A-C puts in a line of rates on traffic from A to C materially lower than the company owning the other railroad charges on traffic from A to B, such a disparity of rates will constitute a preference in favor of C and a prejudice or discrimination against B; because it will enable C to compete at an advantage over B in the territory which lies between them. But such preference or prejudice is not *undue or unjust.* Merchants at B would have no ground of complaint against the line A-C, because it carries no traffic to or from B.

4 I. C. Rep., p. 65, Eau Claire Board of Trade v. C. M. & St. P. Ry. et al., 4th head note.

Nor would merchants at B have any complaint against the line A-B; because the reduction in rates on traffic from A to C, which alone created the disparity of rates, was not made by the line A-B, but by the line A-C, over which the line A-B has no control. Even if the same company owned both lines, the mere fact that it made a material reduction in the rates on traffic from

A to C, would not, of itself, establish the fact that the preference in favor of C was *undue*, or that the prejudice or discrimination against B was *unjust*. The competition existing at C might compel the company to accept on traffic from A to C, rates much lower than it otherwise might reasonably charge.

LXII.

Under the Third Section of the Act to Regulate Commerce a Common Carrier is not Made Responsible for Any Undue Preference, Unless it be Created by the Carrier's Act.

The third section provides "that it shall be unlawful for any common carrier subject to the provisions of this act *to make or give* any undue or unreasonable preference or advantage," etc.

Even though a preference be undue, or unreasonable, unless it be one which *the common carrier has* "*made or given*," such carrier is not responsible for it.

Such preference as may exist in this case in favor of Atlanta, Fairburn, Palmetto, Newnan, or Hogansville, existed before any of the appellees' railroads were constructed, and therefore it is not one which *they* have "*made or given*."

Mr. Calloway, who filed the petition before the Commission, in this case, testifies that his information is that before railroads were built, merchants at La Grange did not trade at New Orleans; but traded at Charleston.

Trans., p. 84.

Of course, before railroads were built, freight had to be hauled by wagon from Charleston to La Grange; and as Atlanta, Fair-

burn, Palmetto, Newnan, and Hogansville were nearer than La Grange to Charleston, they naturally had lower wagon rates than La Grange upon all freight purchased by them.

The South Carolina Railroad was completed from Charleston to Augusta in 1833.

See Poor's Manual for 1890, p. 723.

The Georgia Railroad, extending from Augusta to Atlanta, was completed in 1845.

See Poor's Manual for 1888, p. 589.

The Atlanta & La Grange Railroad, extending from Atlanta to La Grange, and which is now known as the Atlanta & West Point Railroad, was opened from Atlanta to West Point, May 15, 1854.

See Poor's Manual for 1890, p. 346.

After the South Carolina Railroad was completed from Charleston to Augusta in 1833, freight was doubtless carried from Charleston to Augusta by rail, and thence hauled by wagon to Atlanta, Fairburn, Palmetto, Newnan, Hogansville, and La Grange.

After the Georgia Railroad was completed from Augusta to Atlanta in 1845, freight was doubtless carried from Charleston by rail to Atlanta, and thence hauled by wagon to Fairburn, Palmetto, Newnan, Hogansville, and La Grange.

It is morally certain that up to 1854, when the Atlanta & West Point Railroad was completed from Atlanta to La Grange, La Grange had always paid higher rates upon all of her freight than were paid by Atlanta, Fairburn, Palmetto, Newnan, or Hogansville. The preference enjoyed by Atlanta, Fairburn, Palmetto, Newnan, and Hogansville, over La Grange, in the

matter of freight rates, is therefore one which was not created by the Atlanta & West Point Railroad, but was one which had always existed prior to the completion of that railroad. The appellees simply recognized a preference already existing; and the real ground of complaint in this case is, that the appellees did not reverse the condition of affairs, which was in existence, when the Atlanta & West Point Railroad reached La Grange; and that they did not take from Atlanta, Fairburn, Palmetto, Newnan, and Hogansville the preference which they then enjoyed, and give that preference to La Grange.

LXIII.

The Situation at La Grange After Appellees' Line was Completed from New Orleans.

As La Grange was nearer than Hogansville, Newnan, Palmetto, Fairburn, or Atlanta, to New Orleans, she would have had lower rates than any of those cities from New Orleans, if distance alone could have controlled.

As before stated, railroads not only recognize, but insist, that distance shall control, in the absence of competition. But where competition conflicts with distance, competition must control, or it must be abandoned. All competing lines, whatever may be their difference in length, must accept the lowest rates offered by either of them; or surrender the competitive traffic to the one that offers the lowest rates. If the lowest rates be offered by the shortest line, the longer lines must disregard the disadvantage of distance under which they labor; or if, as is frequently the case, the lowest rates be offered by the longest line, the shortest line must accept the rates, however much they may be below the rates which the shortest line might, but for the competition, have rea-

sonably charged. The competition at Atlanta has been such that it has been impossible for the appellees to construct their rates from New Orleans to La Grange, Hogansville, Newnan, Palmetto, Fairburn, and Atlanta according to distance. They were compelled to accept the competitive rates prevailing at Atlanta, or abandon the New Orleans-Atlanta traffic altogether. And the competitive rates at Atlanta have been so low, that even though they be increased by adding to them the local rates from Atlanta back to Fairburn, Palmetto, Newnan, and Hogansville (which local rates are fixed by the Georgia Railroad Commission and cannot be exceeded), they make the rates from New Orleans to Fairburn, Palmetto, Newnan, and Hogansville lower than they would have been, if distance could have controlled, and lower than the rates are from New Orleans to La Grange.

LXIV.

The Competition Which Exists at Atlanta is Entitled to the Same Consideration Under the Third Section, as it is Under the Fourth Section, of the Act to Regulate Commerce.

In the case of the Texas & Pacific Ry. v. I. C. C., 162 U. S., p. 232, this Court quotes approvingly the following statement made by Jackson, Circuit Judge, in the case of I. C. C. v. B. & O. R. R. Co., 43 Fed. Rep., p. 53:

"The English cases establish the rule that, *in passing upon the question of undue or unreasonable preference or disadvantage*, it is not only legitimate, but proper, to take into consideration, besides the mere difference in charges, various elements, such as the convenience of the public, the fair interests of the carrier, the relative quantities or volume of the traffic involved, the rela-

tive cost of the services and profit to the company, and the situation and circumstances of the respective customers with reference to each other as *competitive* or otherwise."

162 U. S, p. 232, Tex. & Pac. Ry. v. I. C. C.

In the same case this Court, in discussing the third section, says:

"In passing upon questions arising under the act, the tribunal appointed to enforce its provisions, whether the Commission or the courts, is empowered to fully consider all the circumstances and conditions that reasonably apply to the situation, and that, in the exercise of its jurisdiction, the tribunal may and should consider the legitimate interests as well as of the carrying companies as of the traders and shippers, *and in considering whether any particular locality is subjected to an undue preference or disadvantage*, the welfare of the communities occupying the localities where the goods are delivered is to be considered as well as that of the communities which are in the locality of the place of shipment. That among the circumstances and conditions to be considered, as well in the case of traffic originating in foreign ports as in the case of traffic originating within the limits of the United States, *competition that affects rates should be considered*, and in deciding whether rates and charges made at a low rate to secure foreign freight which would otherwise go by other competitive routes are or are not *undue and unjust*, the fair interests of the carrier companies and the welfare of the community which is to receive and consume the commodities are to be considered," etc

162 U. S., pp. 233, 234, Tex. & Pac. Ry. v. I. C. C.

175 U. S., p. 665, Louisville, etc., R. R. Co. v. Behlmer.

In the case of T. & P. Ry. Co. v. I. C. the "competitive" routes were either all water lines from Liverpool, via Cape Horn, to San Francisco; or water and rail lines from Liverpool, via the

Isthmus of Panama, to San Francisco; or water and rail lines from Liverpool to various Atlantic and Gulf ports in the United States, and thence to San Francisco. One of the questions argued in that case was, whether either of said "competitive routes" was "subject to the Act to Regulate Commerce;" and the Commission declined to recognize that case as deciding that competition between carriers which are "subject to the Act to Regulate Commerce" can be considered in determining whether a certain preference or advantage is undue or unjust. That question was definitely settled by this Court in the subsequent cases of the Interstate Commerce Commission v. Alabama Midland Ry. Co., 168 U. S., pp. 164, 167; and Louisville, etc., R. R. v. Behlmer, 167 U. S., pp. 666, 667, 668.

In the case of E. T. V. & G. Ry. Co. v. I. C. C., 181 U. S., pp. 18 and 19, this Court said:

"In a supposed case when, in the first instance, upon an issue as to a violation of the fourth section of the act, it is conceded or established that the rates charged to the shorter distance point are just and reasonable in and of themselves, and it is also shown that the lesser rate charged for the longer haul is not wholly unremunerative and has been forced upon the carriers by competition at the longer distance point, it must result that a discrimination springing alone from a disparity in rates cannot be held, in legal effect, to be the voluntary act of the defendant carriers, and as a consequence *the provisions of the third section of the act forbidding the making or giving of an undue or unreasonable preference or advantage will not apply.*

"*The prohibition of the third section*, when that section is considered in its proper relation, is directed against unjust discrimination or undue preference arising from the *voluntary* and *wrongful* act of the carriers complained of as having given undue pref-

erence, and does not relate to acts *the result of conditions wholly beyond the control of such carriers.* To otherwise construe the statute would involve a departure from its plain language, and would be to confound cause with effect. For, if the preference occasioned in favor of a particular place by competition there gives rise to the right to charge the lesser rate to that point, it cannot be that the availing of this right is the cause of the preference, and especially is this made clear in the case supposed, since it is manifest that forbidding the carrier to meet the competition would not remove the discrimination.

"The only principle by which it is possible to enforce the whole statute is the construction adopted by the previous opinions of this Court; that is, that competition which is real and substantial and exercises a potential influence on rates to a particular point, brings into play the dissimilarity of circumstance and condition provided by the statute, and justifies the lesser charge to the more distant and competitive point than to the nearer and noncompetitive place, and that this right is not destroyed by the mere fact that incidentally the lesser charge to the competitive point may seemingly give preference to that point, and the greater rate to the noncompetitive point may apparently engender a discrimination against it. We say seemingly on the one hand and apparently on the other, because in the supposed cases the preference is not 'undue' or the discrimination 'unjust.' This is clearly so, when it is considered that the lesser charge upon which both the assumption of preference and discrimination is predicated is sanctioned by the statute, which causes the competition to give rise to the right to make such lesser charge."

The italics are mine.

LXV.

While "Mere" Competition Does Not Authorize a Less Charge for a Longer than a Shorter Distance, the Reverse is True Where the Competition, Having Due Regard to the Interests of the Public and of the Carrier, Ought Justly to Have Effect Upon the Rates

Counsel for appellant, in the Circuit Court, referred to the following language used by this Court in the Alabama Midland Railway case, viz.:

"In order further to guard against any misapprehension of the scope of our decision, it may be well to observe that we do not hold that the *mere* fact of competition, *no matter what its character or extent*, necessarily relieves the carrier from the restraints of the third and fourth sections," etc.

168 U. S., 167, I. C. C. v. Alabama Midland Ry. Co.

I do not contend "that the *mere* fact of competition, no matter what its character or extent," necessarily "relieves the carrier from the restraints of the third and fourth sections." My only contention is, that "competition *that materially and substantially affects rates* should be considered." And that proposition has been distinctly decided by this Court in the case of the Texas & Pacific Ry. v. I. C. C., 162 U. S., 233; in the case of I. C. C. v. Alabama Midland Ry. Co., 168 U. S., p. 166; in the case of Louisville, etc., R. R. v. Behlmer, 175 U. S., pp. 674, 675; and in the case of E. T. V. & G. R. R. v. I. C. C., 181 U. S., p. 1.

Counsel for appellant also referred to the following language used by this Court in the Alabama Midland Railway case, viz.:

"The competition may in some cases be such as, *having due regard to the interests of the public and of the carrier*, ought justly to have effect upon the rates, and in such cases there is no absolute rule which prevents the Commission or the courts from taking that matter into consideration."

168 U. S., p. 167.

I contend that the competition at Atlanta, "ought justly to have effect upon the rates," if we are to have due "regard to the interests of the public."

As said by this Court in 163 U. S., pp. 165-166; in 162 U. S., pp. 233-234, and in 175 U. S., p. 665, "the welfare of the communities occupying the localities where the goods are delivered is to be considered as well as that of the communities which are in the locality of the place of shipment."

The "place of shipment" in this case, is New Orleans. "The communities occupying the localities where the goods are delivered" include the community at Atlanta, as well as the community at La Grange. The welfare of New Orleans, and the welfare of Atlanta, are to be considered as well as the welfare of La Grange. New Orleans is greatly benefited by the advantage which accrues to it from the competition afforded by the various competing lines, which extend from New Orleans to Atlanta; and the Commission itself finds and reports that "the lower rates from New Orleans to Atlanta with present adjusted charges from other sources have played an important part in the development of that city (Atlanta) including railway traffic thereto and therefrom," etc.

Trans., p. 44.

Atlanta is as much entitled to the advantage of the fact that it can avail itself of the competition which exists between the various competing lines, which extend from New Orleans to Atlanta, and of the competition which exists between those lines and other lines reaching Atlanta from other markets, as La Grange is entitled to avail itself of the advantage of the fact that it is (by appellees' line) nearer to New Orleans than Atlanta is.

Phipps v. L. & N. W. Ry. Co., Law Rep. (1892), 2 Q. B., 329, *et seq.*

The Phipps case was cited approvingly by this Court in 162 U. S., p. 224, T. & P. Ry. v. I. C. C.; and in 168 U. S., p. 164, I. C. C. v. Alabama Midland Railway Company et al.

I also contend that the competition at Atlanta "ought justly to have effect upon the rates," if we are to have due "regard to the interests" of the appellee carriers.

The rates from New Orleans to Atlanta yield the carriers a small margin of profit over the additional cost of the movement of that traffic.

Trans., p. 107.

It is, therefore, to the fair interests of the appellees to be allowed to earn that margin of profit, however small it may be. It is by making small "margins of profits," on large volumes of low-rate traffic, shipped between competitive points, that much of the revenue of railroad companies in this country is earned.

So long as there is any "margin of profit" at all, the appellees sustain no loss in the carriage of traffic from New Orleans to Atlanta; and therefore they are under no temptation to increase the rates to La Grange, or other shorter distance points, to

recoup against loss. In other words, to paraphrase the language of this Court, "having due regard to the interests of the public, as well as of the appellee carriers, the competition at Atlanta ought justly to have effect upon the rates;" and the Commission ought, in this case, to have allowed the appellee carriers to take that competition into consideration, notwithstanding it was competition between carriers *confessedly amenable to the Act to Regulate Commerce.*

It is only "where the carrier cannot meet the competitive rate to a given point without transporting the merchandise *at less than the cost of transportation*, and therefore without bringing about a *deficiency*, which would have to be met by increased charges upon other business," that competition becomes illegitimate. And it becomes so in that case, because "the engaging in such competitive traffic would both bring about an unjust discrimination, and a disregard of the public interest, since a tendency towards unreasonable rates on other business would arise from the carriage of traffic at less than the cost of transportation to particular places. But no condition of this character is here in question."

181 U. S., p. 20, E. T. V. &. G. Ry. Co. v. I. C. C.

LXVI.

The Mere Fact that There is a Material Disparity Between the Rates to La Grange, and the Rates to the Longer Distance Points, Does Not, of Itself, Constitute an Undue Preference, or an Unjust Discrimination.

In the case of the Texas & Pacific Railway v. Interstate Commerce Commission, 162 U. S., pp. 219, 220, this Court says:

"*The mere circumstance that there is, in a given case, a preference or an advantage, does not of itself show that such preference or advantage is undue or unreasonable* within the meaning of the act. Hence it follows that before the Commission can adjudge a common carrier to have acted unlawfully, it must ascertain the facts; and here again we think it evident that those facts and matters which carriers, apart from any question arising under the statute, would treat as calling, in given cases, for a preference or advantage, are facts and matters which must be considered by the Commission in forming its judgment whether such preference or advantage is undue or unreasonable."

In the same case, on page 239, this Court says:

"*The mere fact that the disparity between the through and the local rates was considerable did not, of itself, warrant the Court in finding that such disparity constituted an undue discrimination*—much less did it justify the Court in finding that the entire difference between the two rates was undue or unreasonable, especially as there was no person, firm or corporation complaining that he or they had been aggrieved by such disparity."

In the case of the Savannah Bureau of Freight & Transportation v. the Charleston & Savannah Ry. Co., 7 I. C. Rep., p. 480, the Commission, having decided that certain shorter distance rates involved in that case were not a violation of the fourth section, says:

"Whether those rates are in violation of the third section, in that they give an undue preference to the more distant point, is a different question which might arise in cases of this kind. It is incidentally raised by the allegations in this complaint, but was not relied upon on the trial. *There is nothing in the case which bears upon it except the mere fact that the rate to the intermediate point is higher.* Under these circumstances we have not considered the question as fairly before us, and do not pass upon it in disposing of the case."

And so in the case at the bar, as in those cases, there is nothing which bears upon the question of undue preference "*except the mere fact that the rate to the intermediate point is higher.*"

Under the authority of the case of the Texas & Pacific Railway v. I. C. C., as well as under authority of the case of the Savannah Bureau of Freight and Transportation v. Charleston & Savannah Railway Co., cited above, I contend that there is no sufficient evidence in the record in this case to justify this Court in declaring that the mere disparity in rates between La Grange and the longer distance points, constitutes an undue preference in favor of the latter, or an undue prejudice against the former.

In the case at bar, this Court is asked by counsel for the appellant to do precisely what the Commission refused to do in the case of the Savannah Bureau of Freight & Transportation v. Charleston & Savannah Railway Co., viz.: to declare that the

appellees have given undue preference to the longer distance points, when there is nothing in the case which bears upon that question, except the mere fact that the rates to La Grange are higher. This Court is asked to do the very thing for which this Court reversed the Court of Appeals in the case of Texas & Pacific Railway v. Interstate Commerce Commission, viz.: to declare that the mere fact that the disparity between competitive and local rates is considerable, warrants the Court in finding that such disparity constitutes an "undue discrimination." It is certain that this Court has no more material evidence before it in this case, than the Commission had before it in the case of the Savannah Bureau of Freight & Transportation v. Charleston & Savannah Railway Co., or the Court of Appeals had before it in the case of the Texas & Pacific Railway Co. v. I. C. C., upon which to predicate a decree that the rates in controversy are violative of the third section.

LXVII.

The Present Differences Between La Grange's Rates and the Rates to the Longer Distance Points is Justifiable.

Counsel for appellant, in the Circuit Court, placed stress upon the following language used by Judge Severens at Circuit, in the case of I. C. C. v. E. T. V. & G. Ry. Co. et al., 85 Fed. Rep., 118:

"In other words, my opinion is that the restraint of Section 4 is to be applied upon *the scale of comparison between the dissimilarity of conditions and the disparity of rates*, and that it is competent under *that* section to restrain the exaction of the

greater charge for the shorter haul, although there may be a substantial dissimilarity of condition, *provided the dissimilarity is not so great as to justify the discrimination made.*"

It is one thing to suggest a theoretical proposition and quite another thing to formulate a practical rule.

In the enforcement of the Act to Regulate Commerce, the courts will necessarily be compelled to formulate certain rules for rate-making, to be followed by the railroad traffic managers of the country. The subject of rate-making is an eminently practical subject; and such rules as the courts may formulate must be such as can be practically applied to the commerce of the country, or they will be useless, if not injurious. With the utmost respect for Judge Severens, I submit that there is no theoretical mathematician who can understand what Judge Severens means by the phrase, "the scale of comparison between the dissimilarity of conditions and the disparity of rates;" and I also submit that there is no practical railroad traffic manager who can make out a tariff or schedule of rates, upon any such "scale of comparison," as Judge Severens suggests.

The opinion of Judge Severens was reviewed and reversed by this Court, in the case of E. T. V. & G. Ry. v. I. C. C., 181 U. S., p. 21, *et seq.;* and this Court after quoting the above extracts from his opinion said:

"But this reasoning, whilst it does not apparently wholly rest on the erroneous view which we have previously refuted, in substance but applies to it. Indeed, it not only does this but it more markedly destroys one provision of the statute by the other, since it in effect declares that the greater the competition at any given point the lesser power has this fact to produce the

dissimilarity of circumstance and condition provided in the statute. That such is the conclusion to which the reasoning resolves itself must be the case, when it is considered that the more active competition is at a particular point the lesser the rate will be to that point, and the greater, therefore, the disparity between the charge to the competitive point than that made to the noncompetitive one. The proposition then is this, that the greater and more potential is the influence of competition on rates and traffic, the less will be its force to engender dissimilarity of circumstance and condition; that is to say, that the causes specified in the statute are to be allowed to produce their influence in inverse ratio to their strength and importance."

181 U. S. pp. 21, 22, 23, E. T. V. & G. Ry. Co. v. I. C. C.

LXVIII.

Judge Severens' Error in Construing My Argument as Contending that the Extent of the Discrimination Must be Confided to the Judgment of Railroad Officials.

Counsel for appellant, in the Circuit Court, quoted the following from the opinion of Judge Severens in the case of I. C. C. v. E. T. V. & G. Ry. Co., 85 Fed. Rep., p. 117:

"The argument of counsel for the carriers is in effect that the extent of the discrimination must be confided to the judgment of the railroad officials, whose ability and experience best qualify them for the task. If this be so, there is nothing for the Commission or the Court to do, but to take notice of the fact that the conditions are dissimilar, and abandon all further in-

quiry. It is fundamental that no such proposition as this can be admitted."

His Honor misapprehended my argument in that case. I have never claimed that "the extent of the discrimination" must be confided to the judgment of railroad officials; nor have I ever denied the right of either the Commission, or the Court, to review the judgment of railroad officials, on that question, or on any other question.

My argument in that case was, as it is in this case, that where the existence of competition at a longer distance point is such as to create a material and substantial dissimilarity between the circumstances and conditions which exist at that point, and those which exist at a shorter distance point, neither railroad officials, nor commissions, nor courts, can determine "the extent of the discrimination" by any such "scale of comparison between the dissimilarity of conditions and the disparity of rates" as was suggested by Judge Severens in that case.

My contention was, and is, that "*the extent* of the discrimination" *determines itself.*

If the rates to the shorter distance point (La Grange) be reasonable within the purview of the first section; if competition which is real and substantial, and exercises a potential influence on rates, forces lower rates to the longer distance point (Atlanta); if there be no discrimination against La Grange except such as springs alone from a disparity in rates; there is but one question submitted either to the carrier, the Commission or the Court, and that is whether it will subserve the public's interest,

as well as the carrier's interest, for the carrier to compete at the longer distance point (Atlanta).

175 U. S., pp. 674, 675, L. & N. R. R. Co. v. Behlmer.
181 U. S., pp. 18, 19, 20, E. T. V. & G. Ry. Co. v. I. C. C.

The decision of that question by a carrier may be reviewed either by the Commission, or the Court. But if the Commission, or the Court, agrees with the carrier that it will subserve the public interest, as well as the interest of the carrier, for the carrier to compete at the longer distance point (Atlanta), then "the extent of the discrimination" *will determine itself;* and it will amount, as in this case, to exactly the difference between the present reasonable rates charged to the shorter distance point (La Grange), and the present lower rates forced by competition at the longer distance point (Atlanta). In such a case, "*the extent* of the discrimination," whatever it may happen to be, cannot, in legal contemplation, be deemed *unjust* or *unreasonable;* and no discrimination is forbidden by the Interstate Commerce Act unless it be *unjust* and *unreasonable.*

LXIX.

The Limitations which May Reasonably be Imposed Upon Carriers in the Exercise of Their Privilege of Taking into Consideration Competition as One of the Circumstances and Conditions Affecting Transportation.

I concede that carriers, in exercising the privilege of taking into consideration competition as one of the circumstances and conditions affecting transportation, must act within "reasonable limits."

In the case at bar, I suggest that the "reasonable limits" imposed upon the exercise of said privilege are three; and all of them are eminently practical.

First: The rates charged by the appellees to the noncompetitive point, La Grange, must not be unjust or unreasonable, within the purview of the first section of the act.

Second: The competition at Atlanta must be such as subserves the public interest, as well as the carrier's interest. It must also be real, and substantial; and such as to compel the acceptance by the appellees of the rates that are accepted by them at that point.

Third: The rates accepted by the appellees on traffic to Atlanta must yield some profit (though it may be very small) *over the additional cost of the movement of that traffic.*

175 U. S., pp. 674, 675, Louisville, etc., R. R. Co. v. Behlmer.

181 U. S., p. 20, E. T. V. & G. Ry. Co. v. I. C. C.

Within the above limits, any rates which may be accepted by the appellees upon traffic to Atlanta are lawful.

The first limitation suggested by me concedes that the rates charged by the appellees to the noncompetitive point (La Grange) must not be unjust or unreasonable (175 U. S., p. 674; 181 U. S., p. 20); *i. e.*, that they must be such rates as would be regarded as perfectly fair, were it not for the fact that the appellees are charging less rates to Atlanta and the other longer distance points.

If the rates charged by the appellees to La Grange are not

just and reasonable, they violate the first section of the act; they must be condemned under that section; and there is no need to invoke the operation of either of the subsequent sections.

But if the rates charged by the appellees to La Grange are just and reasonable (a question which I have hereinbefore considered under the first section of the act), we have the case of a complaint made on behalf of certain persons at La Grange who are charged rates which are perfectly just and reasonable; and whose only real objection is that the appellees are charging less rates to Atlanta, and the other longer distance points.

As said by Lord Curriehill, in Hozier v. the Caledonian Ry. Co., their complaint "may be likened to that of the laborer, who, having worked all day, complained that others, who had worked much less, received a penny like himself."

1 Nev. & Mac., p. 32, Note 4; 1 Nev. & Mac., pp. 45, 47, Jones v. E. C. Ry. Co.; 2 Nev. & Mac., p. 202, Foreman et al. v. Great Eastern Ry. Co.; 1 Nev. & Mac., pp. 97-108, Harris v. Cockermouth, etc., Ry.; 1 Nev. & Mac., p. 120, Ransome v. E. C. Ry. Co.

The Hozier case was cited by this Court in 145 U. S., p. 282, and in 162 U. S., p. 222.

The Jones case was cited by this Court in 145 U. S., p. 283.

The Foreman case was cited by this Court in 162 U. S., p. 222.

And the Harris case was cited by this Court in 162 U. S., pp. 223, 224.

If the rates to La Grange are just and reasonable (a question which I have hereinbefore considered under the first section), the appellees ought not to be required to reduce them; even though such reduction may be necessary to place La Grange upon a "rate equality" with Atlanta, and the other longer distance points; because such a reduction in rates to La Grange, *and the other shorter distance points* involves a serious reduction in the revenue which the appellees derive from the present rates to those points.

The Auditor testifies that the loss of revenue would amount to $63,331.56 per annum.

Hunter Dep., Conn. Test., p. 90.

The second limitation suggested by me concedes that the competition at Atlanta must be such as subserves the public interest as well as the interest of the carrier; that it must be real, and not artificial or merely conjectural; and that it must be material and substantial, *i. e.*, such as to compel the acceptance of the rates that are charged by the appellees to that point.

175 U. S., p. 675.

181 U. S., p. 18 22.

The third limitation suggested by me concedes that the rates accepted by the appellees on traffic to Atlanta, and the other longer distance points, must yield some profit (though it may be very small) *over the additional cost of the movement of that traffic.*

181 U. S., p. 18, E. T. V. & G. Ry. Co. v. I. C. C.

If the competition at Atlanta be real, and such as to affect rates, the carriers must accept those rates or abandon the competitive traffic.

If the rates be so low as not to pay the additional cost of the movement of the competitive traffic, the carriers ought not to be allowed to compete for it. It would not be to their interest to carry the traffic at a loss; and it would not be to the interest of the public for them to do so, because no one is ever benefited in the long run by having another work for him at a loss.

But if the competition be real, and such as to affect rates, and if those rates pay something more than the additional cost of the movement of the traffic, it is to the interest of the carriers, as well as to the interest of the public, that the carriers should be allowed to compete for the traffic. Whatever profit there may be in the traffic, increases, to that extent, the revenues of the carriers; and if there be a profit (however small), there is, of course, no "loss" to be reimbursed by increasing the local rates.

181 U. S., p. 18, *et seq.*, E. T. V. & G. Ry. Co. v. I. C. C.

On the contrary, the local stations are benefited by allowing the carriers to participate in the competitive traffic; because whatever profit may be realized from that traffic (however small it may be), has a tendency to reduce the local rates and to improve the local service.

All three of the limitations suggested by me are entirely practical.

Though the question of the reasonableness of the rates to La Grange involves (as I have heretofore shown) a very difficult problem; it is one which, upon proper evidence, is capable of judicial determination; and there are many cases in the Federal Jurisprudence, in which such questions have been determined by the courts.

It is also entirely practicable to determine whether the competition at Atlanta subserves the public interest as well as the

carrier's interest; whether it is real or artificial; and whether it is material, and substantial, and such as to affect rates.

It is also entirely practicable to ascertain whether the rates accepted by the appellees on traffic to Atlanta, and the other longer distance points, yield a profit over the additional cost of the movement of that traffic. For, while it is impossible to ascertain the cost of carrying any particular ton of freight, or any particular class of freight, it is entirely practicable to closely approximate how much the expenses of a company will be increased by moving a certain traffic, over and above what they would be, if that particular traffic were declined; and such increase represents what is called *the additional cost of movement.*

I submit that the practical limitations, which I have suggested, are far preferable to the theoretical "scale of comparison between the dissimilarity of conditions and the disparity of rates" suggested by Judge Severens; and that the limitations suggested by me have been, in effect, approved by this Court in Louisville, etc., R. R. Co. v. Behlmer, 175 U. S., pp. 674, 675; and in E. T. V. & G. Ry. Co. v. I. C. C., 181 U. S., p. 18, *et seq.*

In the Georgia Railroad Commission cases, the Circuit Court of Appeals says:

"As the noncompetitive point thus gets the benefit of the lowest rate to any of the neighboring competitive points; and as the carriage of competitive traffic to the respective competitive points is remunerating to the carriers to an extent that more than pays the expense of moving the competitive traffic, it is difficult to perceive how the noncompetitive points are subject to any undue or unreasonable prejudice or disadvantage by this scheme of rate-making."

93 Fed. Rep., p. 92, I. C. C. v. W. & A. R. R. Co. et al.

LXX.

Counsel's Misapplication of the Maxim, "So Use Your Own that You do not Injure the Interest of Another."

Counsel for appellant in the Circuit Court contended:

That in determining the extent to which a carrier may go in protecting its own interests, we should apply the maxim of the law, "'So use your own that you do not injure the interest of another;' and that under said maxim, discrimination is only justified to the extent that it may be practiced without inflicting material injury on any *legitimate* interest of the public, or any portion of the public."

The maxim quoted by counsel is conceded, when properly understood.

I concede that competition is no justification for a lesser charge for a longer haul, unless the competition at the longer distance point be such as subserves the public interest.

But in this case, the public consists of three classes of persons:

First: The public at New Orleans.

Second: The public at Atlanta.

Third: The public at La Grange.

That the public at La Grange is discriminated against is admitted; but my contention is that the discrimination is not unlawful, because it is not *unjust*.

The public at La Grange may be injured (though not in a legal sense) in not being able to compete on equal terms with Atlanta in the territory which lies between those places. But the public at New Orleans, as well as the public at Atlanta, is greatly benefited by the competition which exists at Atlanta.

The Court must look to the interest *of the great majority of the public;* and if it conflicts with the interest of a small minority, the loss to the latter is, in contemplation of law, *damnum absque injuria.*

Neither an individual, nor any "portion of the public" has any "*legitimate* interest" in a question *of public policy*, which can be allowed to prevail against the interest of the majority.

A single individual, or any "portion of the public," is entitled to be protected in life, liberty, and property, against the majority, however large the majority may be. But when it comes to a mere question *of public policy*, the universal rule is, *Salus populi suprema lex.*

The question in this case is merely one *of public policy.* The Court will place in one scale the public at New Orleans, together with the public at Atlanta; while in the other scale it will place the public at La Grange; and the legitimate interest of the public, as a whole, will be found in that scale which may preponderate.

Suppose the appellees should tomorrow withdraw from competition at Atlanta. It is obvious that such withdrawal would operate not only to the serious injury of the public at Atlanta, but also to the serious injury of the public at New Orleans, who are engaged in the sale and shipment of goods to Atlanta. But

such withdrawal would not reduce the La Grange rates in the least.

181 U. S., pp. 19, 20.

In a word, the public at La Grange would not be benefited, while the public at New Orleans, as well as the public at Atlanta, would be seriously injured.

As a matter of fact, even the public at La Grange is interested in preserving the competition which exists at Atlanta. The Commission finds and reports that:

"Changes in rate conditions at Atlanta have ordinarily worked similar changes in rates to La Grange. Thus a first-class rate of $1.43 on traffic from New Orleans to La Grange, made by adding the $1.03 rate to Atlanta and the 40 cent local from Atlanta to La Grange, would be reduced to 80 cents, if, during a rate war, the first-class rate from New Orleans to Atlanta should be as low as 40 cents."

Trans., p. 32.

In the case of the E. T. V. & G. Ry. Co. v. I. C. C., 181 U. S., pp. 19, 20, this Court said:

"Indeed, the findings of fact made by the Commission in this case leave no room for the contention that either undue preference in favor of Nashville (the longer distance point) or unjust discrimination against Chattanooga (the shorter distance point) arose merely from the act of the carriers in meeting the competition existing at Nashville. The Commission found that if the defendant carriers had not adjusted their rates to meet the competitive conditions at Nashville, the only consequence would have been *to deflect the traffic at the reduced rates over other lines.* From this it follows that, even although the defendant carriers

had not taken the dissimilarity of circumstance and condition into view, and had continued their rates to Nashville just as if there had been no dissimilarity of circumstance and condition, *the preference in favor of Nashville growing out of the conditions there existing would have remained in force and hence the discrimination which thereby arose against Chattanooga would have likewise continued to exist. In other words, both Nashville and Chattanooga would have been in the same position* if the long and short haul clause had not been brought into play." . . . . "To compel the carriers to desist from all Nashville traffic under the circumstances stated would simply result in deflecting the traffic to Nashville to other routes, and thus entail upon the carriers who were inhibited from meeting the competition, although they could do so at a margin of profit, the loss which would arise from the disappearance of such business, *without anywise benefiting the public.*"

181 U. S., pp. 19, 20.

LXXI.

The Argument of Counsel for Appellant Would Compel the Adoption of Mileage Rates, Which Have Been Abandoned Wherever Tried.

Counsel for appellant contends that while some difference between the rates to La Grange, and the rates to the longer distance points, may be justifiable, the present differences are too great. He does not suggest what the differences ought to be, other than that the rates to La Grange ought not to be higher than the rates to Atlanta.

Under the order made by the Commission in this case the appellees are enjoined from charging any greater compensation to La Grange than to the longer distance points; but they are not enjoined from charging as great compensation to the former as to the latter. Such an order is intelligible under the *fourth* section; but it is wholly unintelligible under the *third* section.

If it constitutes undue preference in favor of the longer distance points, to charge less to them than to La Grange, it constitutes undue prejudice against La Grange, to charge as much to it as to the longer distance points. If distance is to be the controlling factor in determining whether undue prejudice exists in a given case, *all rates must be constructed upon a mileage basis;* and instead of permitting the appellees to charge as much to La Grange, as to the longer distance points, the Commission, if it had the power to fix future rates, should have ordered the appellees to charge less to La Grange; and to so reduce their rates to La Grange, as to make them the same per ton per mile as those charged to the longer distance points. In a word, the Commission (if it had any power to prescribe future rates), should have ordered the appellees *to construct their tariffs on a mileage basis.*

In the Georgia Railroad Commission cases, the Circuit Court of Appeals said:

"If the mere charging of a greater rate for the shorter than for the longer haul gives an undue and unjust preference to the longer distance points, and subjects the shorter distance points to any undue prejudice or disadvantage, it is difficult to see how the charging exactly the same rate for the shorter haul, that is charged for the longer, shall escape condemnation."

93 Fed. Rep., p. 91, I. C. C. v. W. & A. R. R. Co. et al.

If charging the same rate for the shorter haul, that is charged for the longer haul, subjects the shorter distance points to undue prejudice or disadvantage, it is evident that the only way in which the undue prejudice or disadvantage can be removed, is to construct the rates to the shorter distance points, as well as to the longer distance points, according to mileage.

The theory of equal mileage rates is entirely correct in all cases *where competition does not interfere with it.* But in cases where competition does interfere, the theory of equal mileage rates cannot be adopted in actual practice; and though it has been proposed in every country, it has been abandoned by all.

In the report of the case of Ransome v. E. C. Railway, on page 71 of 1 Nev. & Mac., in Note 6, there is an abstract from the report of the English Parliamentary Committee upon the amalgamation of railways in 1872, in which they declare equal mileage rates to be impracticable.

"First, because *it would prevent railway companies from lowering their rates so as to compete with traffic by sea, by canal, or by a shorter or otherwise cheaper railway, and would thus deprive the public of the benefit of competition, and the company of a legitimate source of profit.*"

Second, "it would prevent railway companies from making perfectly fair arrangements for carrying at a lower rate than usual, *goods brought in large and constant quantities, or from carrying for long distances at a lower rate than for short distances.*"

The report continues: "In short, to impose equal mileage rates on the company *would be to deprive the public of the benefit of much of the competition* which now exists, or has existed; to

raise the charges on the public in many cases where the companies now find it to their interest to lower them; and *to perpetuate monopolies*, in carriage, trade and manufacture, *in favor of those routes and places which are nearest* and least expensive, where the varying charges of the company now create competition. And it will be found that the supporters of equal mileage, when pressed, often really mean, *not that the rates they themselves pay are too high, but that the rates others pay are too low.*"

In March, 1885, the Senate appointed a Select Committee on Interstate Commerce. The committee took a mass of testimony, filling a volume of 1,450 pages; and made a report which, with its appendix, fills over 200 pages, and in its report is embodied the report of the English Parliamentary Committee, quoted above.

See Report, Senate Select Committee on Interstate Commerce, January, 1886, p. 57.

In the case of I. C. C. v. Alabama Midland Railway Company, Judge Bruce said: "In the case at bar there are questions of competing lines; and the proposition of the complainant is that notwithstanding this, the circumstances and conditions are substantially the same, and that it is in violation of the fourth section of the statute to charge more for the short haul to Troy, the shorter distance, than to Montgomery, the longer distance point. This argument proceeds upon the view that distance is the controlling factor on a question of rate for transportation of property; and yet *these other matters may be, and often are, more controlling than even distance itself.*"

69 Fed. Rep., p. 231, I. C. C. v. Alabama Midland Ry. Co.

In the case of Imperial Coal Co. v. Pittsburg & L. E. R. Co., it was held by the Commission that "in determining the question

of undue prejudice from a rate, distance is only one of the factors, and other material facts, such as character and quality of the commodity, cost of production, *extent and nature of the competition in the business itself and by other transportation lines*, and the interests of the public in the use of the commodity and its market cost, are to be considered."

2 I. C. Rep., p. 436, Imperial Coal Co. v. Pittsburg & L. E. R. Co., 3d head note.

In the case of Savannah Bureau of Freight and Transportation v. Charleston & Savannah Railway Co., decided December 31, 1897, the Commission said: "Upon the other hand, *it often happens that distance is altogether disregarded*, and it has been held that this may be proper within certain limits and under certain conditions."

7 I. C. Rep., p. 474, Savannah Bureau of Freight & Transportation v. Charleston & Savannah Ry. Co.

In the case at bar, the Court is asked to hold that the mere fact that a greater rate is charged for a shorter than for a longer distance, constitutes an undue preference of the longer distance point over the shorter distance point. The charge of undue preference *is based upon distance alone*, and it must be sustained, if at all, upon the theory that distance must control in rate-making, to the disregard of all other circumstances and conditions.

LXXII.

Neither the Common Law Nor the Act to Regulate Commerce Requires Equality of Charge, Except Where the Services Are Similar.

In the case of I. C. C. v. B. & O. R. R., 145 U. S., 175, Mr. Justice Brown, speaking for this Court, says: "Prior to the enactment of the act of February 4, 1887, to regulate commerce, commonly known as the Interstate Commerce Act, 24 Stat., 379, c. 104, railway traffic in this country was regulated by the principles of the common law applicable to common carriers, which demanded little more than that they should carry for all persons who applied, in the order in which the goods were delivered at the particular station, and that their charges for transportation should be reasonable. It was even doubted whether they were bound to make the same charge to all persons *for the same service* (citing cases), though the weight of authority in this country was in favor of an *equality of charge* to all persons *for similar services.*"

It has been held, in effect, by this Court repeatedly that the service rendered by a carrier in the transportation of traffic to a competitive point, is not "similar" to the service rendered in the transportation of traffic to a noncompetitive point.

162 U. S., pp. 219, 239, T. & P. Ry. Co. v. I. C. C.
168 U. S., pp. 144–175, I. C. C. v. Ala. Midland Ry. Co.
175 U. S., pp. 648–675, L. & N. R. R. Co. v. Behlmer.
181 U. S., pp. 1 *et seq.*, E. T. V. & G. Ry. v. I. C. C.

Therefore a person shipping to a noncompetitive point is not entitled to an "equality" of charge with one shipping to a competitive point.

In Ex Parte Koehler, 31 Fed Rep., p. 321, Judge Deady said :

" The places between which competition in transportation exists between water craft and railways, *or even the latter*, always will and must send and receive freight at lower rates than others not so favored. This is the result of natural advantage, supplemented often by exceptional sagacity and enterprise, and it would be folly in the Legislature to prevent it if it could. As long as people and places differ so widely in capabilities and facilities, social or business equality is impossible. Society can do no more than to give each one an even chance and a fair show to make the most of his or its opportunities, and leave the result to circumstances over which it has little, if any, direct control."

In the case of Brewer & Hanleiter v. Central of Georgia Railway Co., 84 Fed. Rep., p. 268, Judge Speer said: " Shall government undertake the impossible but injurious task of making the commercial advantages of one place equal to those of another? It might as well attempt to equalize the intellectual powers of its people. There should be no attempt to deprive a community of its natural advantages, or of those legitimate rewards which flow from large investments in business industries, and competing systems of transportation to facilitate and increase commerce. The Act to Regulate Interstate Commerce has no such purpose, and yet this appears to be the inevitable result of the decree the complainants seek in the case, without any adequate corresponding advantage either to themselves or to the community in which they live."

If the law be that all persons are entitled to an " equality " of charge, there would be no use for the first section of the act which requires that rates be reasonable; nor for the second section of the act which prohibits unjust discrimination; nor for

the third section of the act which prohibits undue preference; nor for the fourth section of the act which prohibits a greater charge for a shorter distance than for a longer distance, etc. If the law be that all rates shall be equal; or that all rates shall be equal in proportion to mileage; the first four sections of the act are wholly unnecessary.

LXXIII.

Competition is Necessarily a Dominating Factor in Fixing Rates.

If the fact of competition is *not* to be allowed to operate as a *dominating* factor in fixing the charges for transportation at competitive points, then it must be prohibited or stifled altogether. Because, if competition be allowed to operate at all, it *necessarily* becomes a *dominating* factor in fixing the charges for transportation at competitive points.

As said by Judge Deady:

"The places between which competition in transportation exists between water craft and railways, *or even the latter*, always will, and must, send and receive freight at lower rates than others not so favored."

31 Fed. Rep., p. 321, Ex Parte Koehler.

We are therefore confronted with the question as to whether it was the intention of Congress, in passing the Act to Regulate Commerce, to prohibit or stifle competition.

The fifth section of the act, which prohibits pooling, is alone sufficient to show that Congress had no such intention. It expressly prohibits every contract, agreement, or combination for pooling; and pooling was prohibited because it was supposed to have a tendency to stifle competition.

In the case of I. C. C. v. B. & O. R. R. Co., Mr. Justice Brown, speaking for this Court, said that:

"It was not the design of the act to stifle competition."
145 U. S., p. 281, I. C. C. v. B. & O. R. R. Co.

If it was not the design of the act to stifle competition, and if the necessary effect of competition is to enable those places between which competition exists to send and receive freight at lower rates than others not so favored, such competition must be allowed to become a dominating factor in fixing the relative charges of transportation.

The competition at Atlanta is "such as, having due regard for the interests of the public and of the carrier, ought justly to have effect upon the rates;" and therefore it can be properly considered. If the competition be such as can be properly considered at all, it must, of necessity, be allowed to *control* in fixing rates to Atlanta.

There can be no middle course. The courts must hold either that competition *can* be considered, or that it *cannot* be considered in fixing competitive rates.

If they hold that it cannot be considered in fixing competitive rates, then the short rail lines and the water lines will have a monopoly of the transportation business of the country. If, on the other hand, the courts adhere to the doctrine decided by this Court, that competition, such as affects rates, and such as subserves the interests of the public as well as of the carrier, may be considered in fixing competitive rates, then such competition must, of necessity, *control* in the fixing of those rates. All competing lines, however numerous they may be, must accept the lowest rates offered by any one of them, or all but one of them must abandon the competitive traffic altogether.

LXXIV.

The Discrimination Which Exists in This Case Against La Grange is Not Caused by Any Fault or Contrivance of the Appellees.

In Ex Parte Koehler, Judge Deady said:

"It is not the fault or contrivance of the railway that compels the discrimination, but it is the necessary result of circumstances altogether beyond its control. It is not done wantonly, for the purpose of putting the one place up, or the other down, but only to maintain its business against rival and competing lines of transportation. In other words, the matter, so far as the railway is concerned, resolves itself into a choice of evils. It must either compete with the boats during the season of water transportation, and carry freight below what the Legislature declared to be a reasonable rate, or abandon the field and let its road go to rust."

23 Fed. Rep., 533, Ex Parte Koehler.

In another case Judge Deady said:

"Freight carried to or from a competitive point, is always carried under substantially *dis*similar circumstances and conditions from that carried to or from noncompetitive points. In the latter case, the railway makes its own rates, and there is no good reason why it should be allowed to charge less for a long haul than for a short one. When each haul is made from, or to, a noncompetitive point, the effect of such discrimination is to build up one place at the expense of the other. Such action is wilfully unjust, and has no justification or excuse in the exigencies or conditions of the business of the corporation. In the former case, the circumstances are altogether different. The power of the corporation to make a rate is limited by the necessities of

the situation. Competition controls the charge. It must take what it can get, or abandon the field, and let its road go to rust."

31 Fed. Rep., p. 319, Ex Parte Koehler.

181 U. S., pp. 18, 19, 20, E. T. V. & G. Ry. Co. v. I. C. C.

In the case at bar, it is not the fault or contrivance of the appellees that causes the discrimination in favor of Atlanta, and the other longer distance points; but it is the necessary result of circumstances altogether beyond their control. It is not done wantonly, for the purpose of putting those places up, or of putting La Grange down; but only to maintain appellees' business against rival and competing lines of transportation. In other words, the matter, so far as appellees are concerned, resolves itself into a choice of evils. Appellees must either compete with the other railroads which run from New Orleans to Atlanta, and with railroads which run from other markets to Atlanta, or abandon the Atlanta traffic altogether. The power of appellees to make rates to Atlanta is limited by the necessities of the situation. Competition controls the charge at Atlanta. The appellees must take what they can get, or abandon the field at Atlanta.

The rates from Atlanta to Fairburn, Palmetto, Newnan and Hogansville (the other longer distance points) are fixed by the Georgia Railroad Commission, and cannot be exceeded; and appellees' through rates from New Orleans to Fairburn, Palmetto, Newnan and Hogansville, cannot exceed the competitive rates from New Orleans to Atlanta, added to the rates fixed by the Georgia Railroad Commission from Atlanta to those points respectively. *The result is that the through rates from New Orleans to those points are as completely controlled by the competition at Atlanta, as are the Atlanta rates themselves.*

LXXV.

The Longer Distance Points in This Case Are Not "Favored" by the Appellees.

Atlanta is certainly not "favored" in any other sense than that the rival lines centering at that point compete with each other as the Interstate Commerce Act permits them to do.

If those lines should enter into any contract, agreement, or combination to pool their freights at that point, and in that way (as is supposed) to stifle competition, they would commit an offense against the fifth section of that act. If they should enter into any "trust" arrangement to control the rates at that point, they would render themselves amenable to the Anti-Trust Law.

166 U. S., p. 290, U. S. v. Frt. Assn.

The appellees are therefore placed in this dilemma. If they enter into any contract, agreement, or combination to stifle competition at Atlanta, they violate one, and, perhaps, two acts of Congress. If they compete with each other, in good faith, at Atlanta, the necessary result of such competition (as said by Judge Deady) is to reduce the rates at Atlanta, and according to counsel for appellant they are guilty of "favoring" Atlanta; which is but another way of saying that they give to Atlanta an *undue* and *unjust* preference. It would seem, therefore, "that they are to be damned if they do, and to be damned if they don't."

If it be said that Atlanta is "favored" over La Grange, in the sense that Atlanta is geographically so located as to have become the point of intersection of numerous rival lines of rail-

way, and the strategetical rate-making center of the southeastern section of the United States, the fact is admitted ; but it furnishes no just ground of complaint either against Atlanta, or against the railway lines which center there.

As said by Judge Deady, "It is not the fault of the railways that the shipper, who does business at a competing point, has the advantage of it."

23 Fed. Rep., 533, Ex Parte Koehler.

Neither is it the fault of Atlanta, or of the merchants who are located there, that they have the benefit of the competition which exists there. As said by the English Court of Appeals: "I cannot see, looking at the matter as between the two traders, why the advantageous position of the one trader in having his works so placed that he has two competing routes, is not as much a circumstance to be taken into consideration, as the geographical position of the other trader, who, though he has not the advantage of competition, is situated at a point on the line geographically nearer the market."

"Why the logical situation, in regard to its proximity to the market, is to be the only consideration to be taken into account, in dealing with the question, as a matter of what is reasonable and right as between the two traders, I cannot understand. Of course, if you are to exclude this from consideration altogether, *the result must inevitably be to deprive the trader who has the two competing routes of a certain amount of advantage which he derives from that favorable position of his works.*"

Law Rep. (1892), 2 Q. B., p. 242, Executors of Phipps v. L. & N. W. Ry. Co.

LXXVI.

The Disadvantage Under Which La Grange Labors is not Occasioned by Any Action of the Appellees.

Counsel for appellant contends that shorter distance points in the South (such as La Grange), are "blighted by the disadvantage with which they are burdened." It becomes important, therefore, to ascertain by what disadvantage La Grange is burdened; and by whom that burden is imposed. Is it burdened by any disadvantage except that no competing lines of transportation center there? And is that a disadvantage occasioned by the action of the appellees, or is it a disadvantage which arises solely from the geographical location of that place?

Counsel also speaks of the longer distance points in the South growing "prosperous in the sacrifice of others." Can any one show, or will any one undertake to assert, that prior to the promulgation of the rates which competition has forced the carriers to accept upon Atlanta traffic, La Grange enjoyed lower rates than it now enjoys? On the contrary, is it not a notorious fact that the wagon rates to La Grange were very much higher than the railroad rates are now; and is it not manifest that as La Grange rates base upon Atlanta, every reduction which competition has heretofore forced in the Atlanta rates, has inured, to the full extent of such reduction, to the benefit of La Grange? If that be true, how can it be said that Atlanta has grown prosperous "in the sacrifice of La Grange?" On the contrary, La Grange has been benefited by the reduction in Atlanta rates; and Atlanta, instead of becoming prosperous "*in the sacrifice of La Grange*," has shared her prosperity with La Grange.

The Commission finds and reports that "changes in rate con-

ditions at Atlanta have ordinarily worked similar changes in rates at La Grange. Thus, a first-class rate of $1.43 on traffic from New Orleans to La Grange, made by adding the $1.03 rate to Atlanta and the 40 cent local from Atlanta to La Grange, would be reduced to 80 cents, if, during a rate war, the first-class rate from New Orleans to Atlanta should be as low as 40 cents."

Trans., p. 32.

LXXVII.

Local Noncompetitive Stations in the South Have Prospered Since the Civil War as Much as Similar Stations in the North.

Counsel for appellant, speaking of the Southern method of making rates by charging more for a shorter than for a longer distance, where competition compels the lower charge to the longer distance point, contends that:

"With this as a rule in adjusting rates, the poor places must become poorer, and the localities more sparsely settled than ever."

It is true that the density of population and of traffic is much greater in the States north of the Ohio and east of the Mississippi River than it is in the States south of the Ohio; but the fact may be accounted for in many ways other than by ascribing it to the difference which it is claimed exists in the method of rate-making in the two territories. The prejudice against slavery which was entertained by all Europe discouraged European immigration to the South, and induced it to the North. Among the immigrants there were numerous skilled mechanics and miners, who developed the mining and manufacturing industries of the North; while the South remained, until after the civil war, an exclusively agricultural country. Since the civil war, the in-

dustries of the South have become more diversified; and the local noncompetitive sections in the South have prospered as much as, if not more than, similar stations in the North.

In 1872, the Legislature of Ohio enacted a law, which prohibits absolutely the charging of more for a short than for a long haul, regardless of the circumstances or conditions under which traffic is carried.

The census shows that sixty local noncompetitive stations in Ohio (having a population of 1,000 or more) increased in population between 1880 and 1890. Those stations are as follows:

Ada, Antwerp, Avondale, Barnesville, Blanchester, Cardington, Carrollton, Cedarville, Chagrin Falls, Chardon, Cleves, DeGraff, Delta, Dennison, Doylestown, Dresden, East Liverpool, East Palestine, Eaton, Elmore, Franklin, Garrettsville, Georgetown, Glendale, Granville, Harrison, Hicksville, Jamestown, Jefferson, Linwood, Logan, Louisville, McConnellsville, Manchester, Minster, Montpelier, Navarre, Nelsonville, New Bremen, New Straitsville, North Amherst, Oberlin, Oxford, Paulding, Piketon, Plain City, Port Clinton, Richwood, St. Bernard, St. Mary, Salem, Salineville, Stryker, Tippecanoe, Wadsworth, Wapakoneta, Wellsville, Westerville, Westwood, Wyoming.

The total population of those local stations was:

In 1890	125,318
In 1880	92,481
Increase	32,837
Percentage of increase	35 per cent

The census shows that the following named sixty local noncompetitive stations in the South (having a population

of 1,000 or more) increased in population between 1880 and 1890, viz.:

Auburn, Ala.; Barbourville, Ky.; Bolivar, Tenn.; Camden, S. C.; Campbellsville, Ky.; Chapel Hill, N. C.; Clinton, Tenn.; Covington, Tenn.; Cullman, Ala.; Cuthbert, Ga.; Darlington, S. C.; Dyersburg, Tenn.; Eatonton, Ga.; Elkton, Ky.; Evergreen, Ala.; Fayetteville, Tenn.; Florence, S. C.; Franklin, Ky.; Franklin, Tenn.; Fort Gaines, Ga.; Glasgow, Ky.; Graniteville, S. C.; Greenville, N. C.; Greenville, Ala.; Lebanon, Ky.; Laurinburg, N. C.; Madisonville, Ky.; Marion, S. C.; Marshallville, Ga.; Maryville Tenn.; Morganton, N. C.; Monroe, N. C.; Oxford, N. C.; Phœnix, Ala.; Piedmont, S. C.; Pulaski, Tenn.; Randleman, N. C.; Reidsville, N. C.; Rogersville, Tenn.; Salisbury N. C.; Somerset, Ky.; Sparta, Ga.; Statesville, N. C.; Summerville, S. C.; Sumter, S. C.; Talbotton, Ga.; Tallapoosa, Ga.; Tallassee, Ala.; Thomasville, Ga.; Toccoa, Ga.; Tullahoma, Tenn.; Union Springs, Ala.; Walterboro, S. C.; Washington, Ga.; Washington, N. C.; Waynesboro, Ga.; West End, Ga.; Winchester, Tenn.; Winnsboro, S. C.; Yazoo, Miss.

The total population of those local stations was:

In 1890	124,574
In 1880	77,664
Increase	46,910
Percentage of increase	60.4 per ct

In other words, it will be seen that taking sixty local noncompetitive stations in Ohio, in which State there has been in force since 1872 a long and short haul law, which takes no account of the circumstances and conditions under which traffic is carried, and comparing them with sixty local noncompetitive stations in the South, where the Southern system of rate-making

has obtained since 1872, the increase in population of said local noncompetitive stations in Ohio was only 35 per cent, as against 60 per cent increase in the population of said sixty Southern local noncompetitive stations.

Mr. Cary testifies that the population of La Grange "has increased very considerably" since the construction of railroads.

Complainant Calloway testified that in 1890, the population of La Grange was 3,100; that since then, there has been built an 18,000 spindle cotton mill; and that the population is now between 4,000 and 5,000 people.

Trans., p. 83.

It is to the pecuniary interest of every railroad to develop the traffic of its local stations; and, by that process of development, such stations gradually increase in population, manufactures, etc., until they become so large as to invite the construction of other railroads; and in time they develop into competing points. The process, however, is gradual, and necessarily slow; but it is a *natural* process of evolution. The Commission, however, is not content to await the operation of natural causes; and it proposes, by an artificial process, to place noncompetitive stations upon an arbitrary equality with competitive stations. It is contended that such arbitrary process of leveling the railroad rates of the country is not only authorized, but required, by the Act to Regulate Commerce. On the contrary, Judge Deady said:

"Congress never intended to make this act a Procrustean bed, in which the conduct of the business of all the roads engaged in interstate commerce shall be made to conform to one arbitrary rule, without reference to the probable and even unavoidable difference in the conditions and circumstances under which it must be transacted."

31 Fed. Rep., pp. 320, 321, Ex Parte Koehler.

LXXVIII.

The Reduction of Rates to La Grange Would Not Increase Either the Tonnage or the Revenue of Appellees' Line.

Counsel for appellant contends that if the shorter distance points were not charged more than the longer distance points, the traffic of the shorter distance points would be increased, and, in that way, the carrier's revenue would be increased.

A similar suggestion was pressed upon Mr. Justice Brewer in the case of Chicago & N. W. Ry. Co. v. Dey, and in reply thereto he said:

"Again it is said that it cannot be determined in advance what the effect of the reductions will be. Oftentimes it increases business, and who can say that it will not in the present case so increase the volume of business as to make it remunerative, even more so than at present? *But speculations as to the future are not guides for judicial action.* Courts determine rights upon existing facts. Of course there is always a possibility of the future; good crops may increase transportation business, poor crops reduce; high or low rates may likewise affect; but the only fair, judicial test is to apply the rates to the business that has been done in the past, and see whether, upon that basis, such rates will be remunerative, or compel the transaction of business at a loss."

35 Fed. Rep., p. 881, Chicago & N. W. Ry. Co. v. Dey.

The Commission itself admits in this case that "whether defendants (*i. e.*, appellees) would or would not lose any of their present revenue if New Orleans-La Grange rates were reduced to the Atlanta basis is altogether a speculative question."

Trans., p. 46.

If the Government of the United States desires to conduct experiments in railroad rate-making, as it has a perfect right to do, it should either defray the expense of such experiments, or guarantee the companies against loss resulting therefrom. If the Government should see proper to exercise its right of eminent domain by appropriating the interstate railroad property of this country to its own use, I believe that the owners of railroad property would, in general, be more than willing to surrender the railroads to the Government, at anything like a fair valuation. But so long as the Government insists upon the railroads being operated by their owners, the owners ought not to be forced to undertake costly speculative experiments in rate-making which, in the opinion of experienced traffic managers, would result in disastrous failure.

It is fair to assume that the traffic managers of the Southern railroads, who are men of long and varied experience, and some of them of world-wide reputation, are competent judges as to what line of conduct would most tend to increase the revenues of their companies; and the financial condition of Southern railroads is such as to justify us in assuming that their traffic managers have every motive to increase their revenues. The testimony of a number of traffic officials in the South was taken in this case, upon the point as to whether a reduction in the rates to La Grange so as to make them not higher than the rates to the longer distance points, would, or would not, tend to increase the revenue of the appellees. In every instance their opinion was in the negative; and they gave their reasons for the opinions they expressed.

Trans., pp 386, 382, 392, 371, 376, 377.

Counsel for appellant, in the Circuit Court, quoted from an opinion of Hon. Aldace F. Walker, formerly a member of the Commission. But it is proper to state that Mr. Walker never had any experience in the operation of railroads in Southern

territory. A line of conduct which might be eminently wise in Trunk Line territory, where population and traffic are very dense, might be eminently unwise in Southern territory, where the population is sparse; and the volume of traffic, which is light, is scattered at long intervals, through large sections of country, some of which are incapable of supporting even the few people that inhabit them.

Sometimes a reduction in rates will increase the consumption of certain articles, and in that way increase the traffic, and consequently, the revenue of railways carrying the traffic. But it is by no means true in all cases. In fact, it is true in no case, except where the rate charged for transportation represents so large a proportion of the market value of the article transported, *that it is practicable for the merchant who sells the article to give the consumer the benefit of the reduction.* To illustrate my meaning:

By reference to the report and opinion of the Commission in this case, it will be noticed that the largest reduction that would have to be made in order to bring the La Grange rates down to the level of Atlanta rates is 40 cents per hundred pounds on first class goods from New Orleans to La Grange.

Trans., pp. 34, 35.

Dry goods are first-class. On a hat weighing six ounces, a difference of 40 cents per one hundred pounds would amount to only 15-100 of a cent. A difference of 40 cents per hundred pounds on coffee amounts to only 4 mills per pound; and to a consumer purchasing ten pounds of coffee for domestic use, the difference would amount to only 4 cents.

It is manifest that while such a reduction in rates might enable the merchant to realize a slightly greater profit on his sales to consumers, it would, in most instances, be of no importance whatever, so far as the consumer is concerned. No one would

wear more hats, or drink more coffee, because of any such reduction in rates; for, even if the merchant were disposed to give the consumer the benefit of the reduction, *the amount is too small to make the change.*

Counsel referred in the Circuit Court, to what the reduction would amount to *on car-load quantities.* But *consumers* seldom purchase in car-load quantities, and they never purchase in car-load quantities the higher classes of freight, such as dry goods, etc., etc.

Sugar, molasses, and rice constitute the bulk of the New Orleans-La Grange traffic.

Trans., pp. 281, 295.

Mr. Smith, the Auditor of the Interstate Commerce Commission, testifies that it is a well-known fact that the actual consumer usually buys those articles in much less than car-load quantities.

Trans., p. 275.

Mr. Calloway testifies that his customers do not buy in car-load quantities.

Trans., p. 82.

As before stated, unless the reduction in rates is such as that it is practicable for the merchant to give the consumer the benefit of the reduction (which is seldom the case as to car-load quantities), consumption will not be increased, and therefore neither the volume of traffic carried by the railroad, nor the revenue derived from the traffic by the railroad, will be increased.

Counsel insisted, however, in the Circuit Court, that even though the reduction may inure to the benefit of the merchant alone, the merchant is a part of the public, and as such, is entitled to have the reduction ordered in his interest. It must be remembered, however, that the owners of railroad property are also a part of the public, and that their interests are entitled to some consideration. It seems to be a popular idea that whenever a merchant desires to increase his line of profit, all he has to do is to apply to a railroad commission, either State or Federal, to have his profits increased by diminishing the profits or dividends of railroad stockholders. Upon this point, in the case of Ricketts, Smith & Co. v. Midland Railway Co., Law Rep. (1896), 1 Q. B., p. 266, the English Railway Commission, speaking through Collins, J., said:

"I think, therefore, that the reasonableness of the rate *is not to be tried by its effect upon the trade of the persons who have to pay it.* It may be a prudent thing for a carrier to tempt traffic by charging rates much lower than he would reasonably be justified in demanding having regard to the elements which I have referred to as primarily affecting the reasonableness of the rate; but this is a question of railway management, which, in my judgment, lies outside our province. *Within these limits he is entitled to get as much as he can, even though he thereby diverts a large part of the merchant's profit into his own pocket.*"

If the rates to La Grange should be reduced, so as to be not higher than the rates to Atlanta, it would doubtless, in some instances, induce merchants at La Grange to purchase their goods in New Orleans instead of purchasing them at Atlanta. But the volume of their purchases would be no greater than they have heretofore been. The number of their customers would not be increased; the amount consumed by their customers would not be increased; and, therefore, traffic, and the revenue of the railroads, would not be increased. While there might be

a *diversion* of a certain portion of traffic from Atlanta to New Orleans, there would be no substantial *increase* in the aggregate volume of traffic.

Unless reductions in rates are such as *to reach consumers and induce them to use more of the articles* upon which the reductions are made, there can be no *increase* of tonnage produced by such reduction.

LXXIX.

Counsel's Misconception of the Decision of this Court in the Joint Traffic Association Case.

Counsel for appellee, in the Circuit Court, quoted the following from the opinion of this Court in the Joint Traffic Association case (171 U. S., 505):

"The result of *lower* rates is *generally* a greater demand for the articles transported, and this greater demand can only be gratified by a larger supply, the furnishing of which increases commerce."

It will be noticed that this Court undertakes to state a proposition which is only *generally* true; and that it does not affirm it to be universally true. While the Court says that the result of *lower* rates is *generally* a greater demand for the articles transported, it does not say *how much* lower the rates must be made than those theretofore prevailing, in order for the reduction to increase the demand. If the La Grange rates should be made the same as the Atlanta rates, it might increase the sale at La Grange of some of the classes and commodities; and it might divert some of the traffic from Atlanta to La Grange. A mere diversion of traffic from Atlanta to La Grange would not,

however, increase either the tonnage or the revenue of the appellee companies. In order for the tonnage or revenue of the appellees to be increased, the aggregate amount of merchandise consumed in the territory between Atlanta and La Grange must be increased. And the people who reside in that territory cannot be induced to increase their purchases, unless the La Grange rates should not only be reduced as low as the Atlanta rates, but reduced to a point where the benefit of the reduction, instead of going into the pocket of the merchant, would reach the consumer, and induce him to increase his purchases.

LXXX.

It is Not a Proper Function of Government to Attempt to Equalize the Social Relations or Business Facilities of Communities.

Counsel for appellant, in effect, contends that public policy would be advanced by building up the local stations at the expense of the competitive cities. I submit, however, that it is no proper function of government to deprive the competitive cities of the strategetical advantages which they enjoy. Counsel can mean nothing else than that the commerce and population of Atlanta, and other large basing points, and trade centers, in the country, ought, at least to a certain extent, to be taken away from them, and distributed among the small local stations on the railroads which center there. In reply, I repeat the language of Judge Deady that:

"As long as people and places differ so widely in capabilities and facilities, social or business equality is impossible. Society can do no more than to give to each one an even chance and a fair show to make the most of his or its opportunities, and leave

the result to circumstances over which it has little, if any, direct control."

31 Fed. Rep., 321, Ex Parte Koehler.

I also repeat the language of Judge Speer:

"There should be no attempt to deprive a community of its natural advantages, or of those legitimate rewards which flow from large investments in business industries, and competing systems of transportation to facilitate and increase commerce."

Brewer & Hanleiter v. Central of Ga. Ry., 84 Fed. Rep., p. 268.

LXXXI.

Appellees' Rates from New Orleans to La Grange Do Not Violate the Fourth Section of the Act to Regulate Commerce.

The order of the Commission directs the appellees to cease and desist from charging any greater compensation in the aggregate for the transportation of freight articles "from New Orleans, La., for the shorter distance to La Grange, Ga., than they contemporaneously charge, demand, collect, or receive for transporting the like kind of freight traffic from New Orleans for the longer distance over the same line in the same direction to Hogansville, or Newnan, or Palmetto, or Fairburn, Ga., the shorter being included within the longer distance."

Trans., p. 50.

That part of the Commission's order which is quoted above shows upon its face that it is based alone upon what is known as the long and short haul clause of the fourth section. It enjoins the appellees to cease and desist from charging or receiving

"any greater compensation in the aggregate" for the transportation of "a like kind" of property for a "shorter distance" (to La Grange) "than for the longer distance over the same line in the same direction" (to the places named), 'the shorter being included within the longer distance." The words in quotation marks are taken literally from the long and short haul clause of the fourth section, and they cannot be found in any other section of the act.

I have shown in Sections VIII and X of this argument that competition absolutely controls the rates which appellees can obtain from New Orleans to Atlanta, and I have shown in Sections IX and XI that the Georgia Railroad Commission rates absolutely control the rates which the Atlanta & West Point Railroad can obtain from Atlanta to Fairburn, Palmetto, Newnan, and Hogansville. It is manifest, therefore, that the competition at Atlanta, in connection with the rates fixed by the Georgia Railroad Commission, controls the rates which the appellees can obtain from New Orleans to Fairburn, Palmetto Newnan, and Hogansville.

In the case of the Interstate Commerce Commission v. Alabama Midland Railway Co., this Court says:

"We are unable to suppose that Congress intended by the fourth section, and the proviso thereto, to forbid common carriers, in cases where the circumstances and conditions are substantially dissimilar, from making different rates until and unless the Commission shall authorize them to do so," etc.

168 U. S., p. 169.
175 U. S., p. 669, Louisville, etc., R. R. Co. v. Behlmer.
181 U. S., pp. 18, 19, E. T. V. & G. Ry. Co. v. I. C. C.

Again, this Court says:

"That competition is one of the most obvious and effective

circumstances that make conditions under which a long and short haul is performed substantially dissimilar, and as such must have been in the contemplation of Congress in the passage of the Act to Regulate Commerce, has been held by many of the Circuit Courts."

I. C. C. v. Ala. Midland Ry. Co., 168 U. S., p. 164.
93 Fed. Rep., p. 87, I. C. C. v. W. & A. R. R. Co. et al.
175 U. S., p. 667, Louisville, etc., R. R. Co. v. Behimer.
181 U. S., pp. 18, 19, E. T. V. & G. Ry. Co. v. I. C. C.

LXXXII.

Judge Severens' Error in Holding that the Fourth Section of the Act to Regulate Commerce May Apply, Notwithstanding There May be a Substantial Dissimilarity of Conditions.

Counsel for appellant relied in the Circuit Court upon the opinion of Judge Severens in the case of Interstate Commerce Commission v. East Tennessee, Virginia & Georgia Railway Company et al.

In that case Judge Severens, referring to the decision of the Commission in the case of the Savannah Bureau of Freight & Transportation v. Charleston & Savannah Railway Company et al., says that the Commission, "evidently disheartened by the adverse ruling of the Supreme Court in recent cases," . . . "seems to give up Section 4 as of no force or effect in any case where the conditions are not 'substantially similar.'"

85 Fed. Rep., 117.

The Judge, after referring to certain language employed in the opinion delivered by the Commission in that case, says:

"Now, I do not understand that such a conclusion follows from that decision (*i. e.*, the decision of this Court in the Alabama Midland Railway case). On the contrary, I suppose that when a violation of the long and short haul provision is charged, competition is one of the elements which enter into the determination, whether the conditions are similar, and if dissimilarity is found, *then the further question arises whether the dissimilarity is so great as to justify the discrimination which is complained of.* . . . . In other words, my opinion is that the restraint of Section 4 is to be applied upon the scale of comparison between the dissimilarity of conditions and the disparity of rates, and that it is competent, *under that section*, to restrain the exaction of the greater charge for the shorter haul, although there may be a substantial dissimilarity of conditions, provided the dissimilarity is not so great as to justify the discrimination made."

I. C. C. v. E. T. V. & G. Ry. Co. et al., 85 Fed. Rep., p. 118.

This Court expressly disapproved the construction suggested by Judge Severens, and, after quoting the above extract from his opinion, said:

"But this reasoning, whilst it does not apparently wholly rest on the erroneous view which we have previously refuted, in substance but applies to it. Indeed, it not only does this, but it more markedly destroys one provision of the statute by the other, since it in effect declares that the greater the competition at any given point the lesser power has this fact to produce the dissimilarity of circumstance and condition provided in the statute. That such is the conclusion to which the reasoning resolves itself must be the case, when it is considered that the more active competition is at a particular point the lesser the rate will be to that point, and the greater, therefore, the disparity between the charge to the competitive point than that

made to the noncompetitive one. The proposition then is this, that the greater and more potential is the influence of competition on rates and traffic, the less will be its force to engender dissimilarity of circumstance and condition; that is to say, that the causes specified in the statute are to be allowed to produce their influence in inverse ratio to their strength and importance."

181 U. S., pp. 21, 22, 23, E. T. V. & G. Ry. Co. v. I. C. C.

LXXXIII.

It is Not Necessary that There Should be Anything "Rare," "Unusual" or "Peculiar" in the Competition.

Counsel for appellant, in the Circuit Court, contended that as competition between railroads which are subject to the Act to Regulate Commerce is "ordinarily incident to the business," and therefore not "unusual," or "peculiar," it cannot create a "substantial dissimilarity" within the purview of the fourth section.

Counsel has fallen into the very error for which the Commission was reversed by this Court in I. C. C. v. Alabama Midland Ry., 168 U. S., pp. 144 to 175; L. & N. R. R. v Behlmer, 175 U. S., pp. 648 to 675; and E. T. V. & G. Ry. v. I. C. C., 181 U. S., pp. 1, 18, 19.

The error was first advanced by the Commission in the case of In Re Louisville & Nashville R. R. Co. (sometimes cited as Re Southern Railway & Steamship Association), 1 Inters. Com. Rep., p. 278, in which it was held by the Commission that where railroads "are subject to the Act to Regulate Commerce," com-

petition between them could not be considered except in "*rare and peculiar cases.*"

1 Inters. Com. Rep., p. 278, right col., 5th head note, par. (c).

The error was repeated by the Commission in the Alabama Midland case, in which the Commission said:

"No attempt is made to establish substantial dissimilarity of circumstances and conditions at Montgomery on the ground of rail competition further than by proof of the fact that there are a number of railway lines running to and through that city connecting with different parts of the country. This alone, it is scarcely necessary to say, is not sufficient. Re Louisville & Nashville R. R. Co., 1 Inters. Com. Rep., 278, 1 I. C. Rep., p. 31."

4 Inters. Com. Rep., p. 355, left col. Board of Trade v. Alabama Midland Ry. Co.

In the Alabama Midland Ry. case, there was no pretense that there was anything "rare" or "peculiar," or "unusual," in the competition between the various railroads which centered at Montgomery. It was conceded that all of said railroads were subject to the Act to Regulate Commerce; and the very question which this Court was asked to decide in that case was whether the competition between those rail lines at Montgomery, all of which were confessedly subject to the Act to Regulate Commerce, could properly be taken into consideration in fixing competitive rates to and from Montgomery.

While there was a question of fact in the Alabama Midland Ry. case as to whether there was any water competition at Montgomery, there was no question of law in that case as to whether water competition could be taken into consideration.

The Commission itself, in one of its earliest cases, had decided

that water competition, and competition between rail carriers *not* subject to the Act to Regulate Commerce could be taken into consideration. It had also decided that competition, even between rail carriers subject to the act, could be taken into consideration "*in rare and peculiar cases.*"

1 Inters. Com. Rep., p. 278, right col., 5th head note. In Re Southern Ry. & S. S. Association.

None of those questions, therefore, were raised in the Alabama Midland Ry. case. The question raised in that case was, whether competition between *rail carriers subject to the act*, could be considered, *where there was nothing* "*rare*," "*unusual*," *or* "*peculiar*" *in it; and where it was in nowise different from other ordinary rail competition.* This Court decided in that case, that if the competition be such as to affect rates, and such as subserves the public interest as well as the interest of competing carriers, it may be taken into consideration, notwithstanding all of the competing rail carriers are subject to the Act to Regulate Commerce, and notwithstanding there be nothing "rare," "unusual," or "peculiar" in the competition.

168 U. S., pp. 144 to 175, I. C. C. v. Alabama Midland Ry. Co.

175 U. S., p. 669, Louisville, etc., R. R. Co. v. Behlmer.

181 U. S., pp. 1, 18, 19, E. T. V. & G. Ry. v. I. C. C.

LXXXIV.

The Contention of Counsel for Appellant that Competition Cannot be Considered Except in Certain Extreme Cases.

Counsel for appellant refers to the fact that certain witnesses testified that at the time the Act to Regulate Commerce was passed, and prior thereto, and since, the greater charge for the shorter than the longer haul, etc., only existed in cases of competition in transportation to the longer distance point; and he argues that, as Congress knew this fact, it did not intend that competition in transportation should be an excuse in *all* cases, but only in certain *extreme* cases, where, "*the interests of the public as well as of the carrier demand it.*"

I concede that Congress did not intend that competition in transportation should be an excuse "in *all* cases."

I also concede that Congress did not intend that competition should be an excuse in any case, except where "the interests of the public as well as of the carrier demand it."

But I contend that where "the interests of the public as well as of the carrier" *do* demand it, Congress *did* intend that competition should be an excuse.

175 U. S., pp. 674, 675, Louisville, etc., R. R. v. Behlmer.
181 U. S., pp. 1, 18, 19, *et seq.*, E. T. V. & G. Ry. Co. v. I. C. C.

I deny that the cases in which competition subserves the interests of the public, as well as of the carriers, are "extreme," "unusual," "rare" or "peculiar." On the contrary, I insist

that the interests of the public are usually subserved by the existence of legitimate competition; and I insist that the competition at Atlanta in this case subserves the interests of the public, as well as of the carriers.

LXXXV.

The Argument that Appellees' Rates are What are Known as "Agreed Rates," and Therefore that They are Not the Result of Competition.

In the Circuit Court, counsel for appellant contended that as all of the lines reaching Atlanta charge the same rates to that point, those rates are what are known as "agreed rates," and therefore, there is no real competition at that point. Or, to state it differently, that instead of there being competition at that point, there is an agreement *not* to compete.

This position is inconsistent with another position taken by counsel, and which is discussed in Section LXXXIV of this argument. In the first position, counsel referred to the fact that certain witnesses testified that at the time the Act to Regulate Commerce was passed, and prior thereto, and since, the greater charge for the shorter than the longer haul *only existed in cases of competition at the longer distance point;* and he argued that, as Congress knew that fact, it did not intend that competition should be an excuse, except in certain *extreme* cases, etc.

In one position, he contends that competition is the sole cause for charging less for a longer than for a shorter distance; and in the other position, he contends that there is no real competition at the longer distance point.

Certain traffic agreements between competing railroad companies were considered by this Court in U. S. v. Trans-Missouri Freight Association, 166 U. S., p. 290; and U. S. v. Joint Traffic Association, 171 U. S. p. 505. The agreements before the Court in those cases were held to be violative of the Anti-Trust Act *because their effect was to increase rates* by stifling competition.

In the case at bar, no complaint would be made of the rates to La Grange, if the rates to the longer distance points could be *increased* so as to be not less than the La Grange rates.

The object of the Traffic Association agreements construed by this Court was to restrain within reasonable limits what the carriers regarded as ruinous competition.

The very fact that such agreements were made, is the best evidence that competition existed; and as the object of such agreements was to restrict that competition, and thereby *increase* the longer distance rates so as to remove the disparity which existed between the longer distance rates, and the shorter distance rates, they would have inured, eventually, to the benefit of the shorter distance points, if Congress had not prohibited them, by the Anti-Trust Act.

In the Georgia Railroad Commission cases, the United States Circuit Court of Appeals, replying to a similar argument made by counsel in those cases, said:

"It is true that with reference to both points, *i. e.*, Atlanta and Opelika, the longer distance points in those cases, the force of this competition has been recognized by the respective appellees, and its influence has, by agreement between them, been so adjusted as to fix the rates to each of these points; but witnesses showing thorough competency to testify to the fact, state that this adjustment of the rates has been brought about and is

maintained by force of the competition bearing upon those points. It is argued by counsel for the appellant that by this agreement as to rates, the carriers have contracted to not compete. But it is not shown or reasonably suggested on what ground or for what consideration the competing carriers consented to accept a lower rate to these longer distance points than they charge to the shorter distance points, if they could just as well have agreed and contracted to charge as great or greater rates to the longer than to the shorter distance points."

93 Fed. Rep., pp. 87, 88, I. C. C. v. W. & A. R. R. et al.

The Commission itself finds and reports, in this case, that "competition at Atlanta has been active for many years."

Trans., p. 32.

And that the competition at Atlanta "includes both the competition of markets for supplying goods to Atlanta, *and the competition of carriers* for the carriage of freight to that point from New Orleans, and from Western, Northern, and Northeastern cities."

Trans., p. 28.

LXXXVI.

The Commission Has No Right to Ignore the Natural Advantages of Any City.

In the Circuit Court, counsel for appellant contended that, inasmuch as the order of the Commission is simply that the rates to La Grange shall not be higher than those to the longer distance points, it may be complied with by giving La Grange rates as high as those to the longer distance points, and that this privilege or option given to carriers to make the rates to La Grange as high as to the longer distance points, "*thus ignoring*

the natural advantage of La Grange in being the shorter distance point, is all that can be asked by the carriers, *and is a reasonable allowance for any dissimilarity of conditions resulting from the competition shown in this case.*"

If the Commission had the legislative power to prescribe rates to be charged in the future, as it at one time claimed to have, I could understand such expressions as "the Commission *ignoring the natural advantages* of La Grange."

With an arbitrary rate-making power at its command, it could, with impunity, ignore the natural, or commercial advantages of any city in the Union, and there would be no practical relief, however capricious its action might be.

But, as the Commission has no legislative power, and must act as a quasi judicial tribunal, what right has it to "ignore the natural advantages" of La Grange?

I have shown in Section LXXI of this argument that if it constitutes unjust preference in favor of the longer distance points to charge less rates to them than to La Grange, it constitutes unjust prejudice against La Grange to charge as high rates to it as to the longer distance points; and that if distance is to be the controlling factor, the rates to La Grange and to the longer distance points, respectively, as well as all other rates, must be constructed *on a mileage basis.*

If La Grange is entitled to have its rates constructed on a mileage basis, neither the Commission, nor the Court, has the right to "ignore its natural advantage," in being the shorter distance point.

But if it be held that La Grange is entitled to have its rates constructed on a mileage basis, every other city and station has

the same right; and all rates in this country must be constructed on that basis.

Neither the Commission, nor the Court, has any more power than a railroad, to subject shorter distance points to *any* unjust prejudice; and if they are entitled to have rates constructed on a mileage basis, the Commission, and the Court, as well as the railroads, should say so, and not "ignore their natural advantage," by subjecting them to rates as high as those to the longer distance points.

When counsel says that the privilege given the carriers to charge to La Grange rates as high as those to the longer distance points, "is a reasonable allowance for any dissimilarity of conditions resulting from the competition shown in this case," he concedes that a dissimilarity of conditions *has* resulted from that competition; and yet he fails to explain why it would be a reasonable allowance for that dissimilarity, to permit the carriers to charge to La Grange rates exactly as high as those to the longer distance points, and yet not one cent higher. It is quite easy to make such assertions, but quite impossible to suggest any intelligible reason in support of them.

In the Georgia Railroad Commission cases, the U. S. Circuit Court of Appeals, in replying to a similar argument of counsel, said: "If the mere charging of a greater rate for the shorter than for the longer haul, gives an undue and unjust preference to the longer distance points, and subjects the shorter distance points to any undue prejudice or disadvantage, it is difficult to see how the charging exactly the same rate for the shorter haul that is charged for the longer shall escape condemnation."

93 Fed. Rep., p. 91, I. C. C. v. W. & A. R. R. et al.
181 U. S., p. 22, I. C. C. v. Clyde S. S. Co.

LXXXVII.

It is Not Fair to Compare Competitive Rates with Non-Competitive Rates.

In the case of I. C. C. v. E. T. V. & G. Ry. Co. et al., Judge Severens said:

"Nevertheless, a reference to the Memphis rate is of value in determining whether the rates to Chattanooga are reasonable rates, it appearing that, though the distance is nearly one-third greater than to Chattanooga from the East, rates are accepted for the Memphis business considerably less than those at Chattanooga."

85 Fed. Rep., pp. 111, 112; reversed, 181 U. S., p. 1.

In that case, Memphis was one of the longer distance points and Chattanooga was the shorter distance point. The Commission held that as there was water competition at Memphis, which created dissimilar circumstances and conditions, the lower rates to Memphis were not violative of the fourth section, and refused relief to Chattanooga, so far as Memphis was concerned. According to Judge Severens, however, though the Commission declined to grant relief under the *fourth* section, it could have used the Memphis rates as evidence that the shorter distance rates to Chattanooga are unreasonable, and could have granted relief to Chattanooga under the *first* section.

In the case of A. T. & S. F. R. R. v. D. & N. O. R. R., 110 U. S., 684, this Court refused to use through rates even as presumptive evidence that local rates were unreasonably high.

If Judge Severens is right, there is no use for either the second, third or fourth sections of the act; because every long and short haul case can be disposed of under the first section. If a disparity of rates constitutes an unjust discrimination, then, according to Judge Severens, the higher rate is unreasonable; and dispensing with the second section, relief may be given under the first section. So, if a disparity of rates constitutes an undue prejudice, then, according to Judge Severens, the higher rate is unreasonable; and dispensing with the third section, relief may be given under the first section. And so, if a greater charge be made for a shorter than for a longer distance, then, according to Judge Severens, the shorter distance rate is unreasonable; and dispensing with the fourth section, relief can be given under the first section.

But according to Mr. Justice Brown:

"A charge may be perfectly reasonable under Section 1, and yet may create an unjust discrimination, or an unreasonable preference, under Sections 2 and 3." And he might have added, with equal propriety, may create a greater charge for a shorter than for a longer distance, under such circumstances as to violate Section 4.

145 U. S., I. C. C. v. B. & O. R. R.

According to Mr. Justice Brown, the first section of the act has a scope of its own, and covers a ground entirely distinct from that covered by either Section 2 or Section 3; and I may add, entirely distinct from that covered by Section 4.

Again, Judge Severens said:

"I think the question of the justness and reasonableness of rates under the first section is colored by the other provisions of the law and by the general policy of the whole enactment, which is to effect the equality of charges."

85 Fed. Rep., p. 114; reversed, 181 U. S., p. 1.

In Section LXXII of this argument I have shown that neither the common law, nor the Act to Regulate Commerce, requires "equality of charges," except where the services *are similar*; and therefore I submit that Judge Severens is in error in referring to "the general policy" of the act as aiming at the "*equality* of charges." I also submit that he is in error in holding that "the first section is colored by the other provisions of the law;" for, as stated above, Mr. Justice Brown holds that the first section has a scope of its own, which is distinct from that of any of the other provisions of the law.

Again: In the case of I. C. C. v. E. T. V. & G. Ry. Co. et al., Judge Severens said:

"The question whether the rates are just and reasonable in themselves is in some measure a relative one; that is to say, it may be tested by a comparison of the particular rates with those accepted elsewhere for a *similar* service, etc."

85 Fed. Rep., p. 114; reversed, 181 U. S., p. 1.

I agree to that proposition, provided due importance be given to the word "similar."

Again Judge Severens said:

"It seems to me clear, that the charges accepted for the longer haul may be referred to for the purpose of considering the reasonableness of the charges made for the shorter haul."

85 Fed. Rep. p. 114; reversed, 181 U. S., p. 1.

I agree to that proposition also, provided the service performed in the case of the longer haul be "*similar*" to the service performed in the case of the shorter haul. It is difficult, however, to imagine a case where a carrier would charge less for a long than a short haul, unless the circumstances and conditions of the two hauls were substantially *dis*similar.

Again: In the case of I. C. C. v. E. T. V. & G. Ry. Co. et al., Judge Severens said:

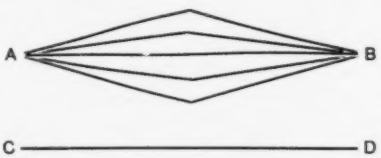
"Such comparisons are applied to every other kind of business, and the fact that there may be competition in such business would not be a controlling consideration, *for the presumption would always* be that the compensation charged for the service or thing is sufficient to be *reasonable*."

85 Fed Rep., p. 115; reversed, 181 U. S., p. 1.

Again he said:

"If, as I gather from the testimony, the through rates to Nashville afford a *fair* profit to the carriers, whether the Northern trunk lines, or the respondents (*and it is reasonable to suppose they would not engage in the business without it*), there is substantial ground for contending that the same charge for carrying freight from the East to Chattanooga, would afford a reasonable profit, and would therefore be a reasonable charge."

83 Fed. Rep., p. 115; reversed, 181 U. S., p. 1.



I agree that if the competition from A to B in the above diagram be substantially similar to the conpetition from C to D, then the rates charged from A to B may fairly be compared with the rates charged from C to D. But if there be severe competition existing from A to B, and no competition existing from C to D, then I deny that any fair comparison can be made between the rates from A to B and those from C to D.

Suppose it should be shown that merchants are constantly in the habit of selling salt, domestics and other staple articles at one per cent profit. It would be perfectly fair to compare the rates charged by one merchant upon *those* articles with the rates charged by another merchant *in the same town* upon the *same articles;* for it would be right to assume that if, for any reason, one merchant could afford to sell those articles at a certain profit, another merchant in the same town could afford to sell them at the same profit; and the fact that the profits of both merchants on those articles were controlled by competition would not alter the case. But would it be fair to compare the profit which those merchants accepted on salt, domestics, etc., with their profit on fancy imported articles, and foreign dress goods? *In a word, it is fair to compare compe'itive rates with competitive rates; and it is fair to compare noncompetitive rates with noncompetitive rates; but it is not fair to compare competitive rates with noncompetitive rates.*

When Judge Severens says that:

"The presumption would always be that the compensation charged for the service or thing is sufficient to be *reasonable;*" and when he says that the presumption is that through rates to longer distance points "afford a *fair* profit" or the carriers would not engage in the business; the correctness of his proposition depends entirely upon the meaning to be given to the words "reasonable and "fair."

It may be said that a profit of one per cent on salt, domestics and other staple articles is a "reasonable" and "fair" profit on those articles, or the merchants "would not engage in the business." And the profit *is* in fact "fair" and "reasonable;" provided the merchant be allowed to charge higher profits upon fancy imported articles, dress goods, etc. A merchant is compelled to carry certain staple articles in stock in order to draw customers for his higher priced goods; and he can "fairly" and

"reasonably" accept extremely low rates of profit upon his staple goods, rather than deplete his stock of such articles, and thereby drive away his custom. But if by the words "fair" and "reasonable," Judge Severens means that because a merchant accepts one per cent profit upon staple articles, the presumption is that it is a fair and reasonable profit to be charged *upon all other articles sold by him;* and that he ought not to be allowed to exceed that profit upon any other article; then I respectfully dissent from his proposition. Any such rule of law administered in a case where a merchant was suing for articles sold and delivered, and no price had been previously stipulated, would destroy the mercantile business of this country. No court would think of charging a jury in a suit brought by a merchant to recover for the value of an imported lace shawl sold by him, that the jurors must, in ascertaining its value, restrict the merchant to the same rate of profit upon the shawl as that which he accepts on domestics, and other staple articles. The proposition of Judge Severens, referred to in the last preceding section of this argument, is plausible, and apparently logical, but in reality sophistical.

It may be put in syllogistic form, as follows:

1. Rates charged by a carrier to the longer distance point (Atlanta) must be reasonably high, or the carrier would not accept them.

2. The rates charged by the appellees to La Grange, the shorter distance point, are higher than the rates charged by them to the longer distance point.

3. Therefore, the rates charged by them to La Grange are *unreasonably* high.

The fault in the syllogism is to be found in the major pre-

mise. And it consists in stating a fact as being true under all circumstances, which, though it may be true under certain circumstances, is not true under other circumstances, and is not true under the circumstances of the particular case, in which the syllogism is invoked.

A similarly faulty syllogism would be the following:

1. Men are black.

2. George Washington was a man.

3. Therefore George Washington was black.

If a railroad has no competition to contend with, its own interests will induce it to charge according to distance.

In that case, rates charged by it to a longer distance point may properly be presumed to be reasonably high; and in that case, the major premise of the Commission's syllogism would be true.

But where severe competition exists at the longer distance point, whether the competition be between market and market, or between product and product, or between carrier and carrier, the presumption instead of being that the rates to that point are reasonably high, is that they are reasonably, or perhaps *un*reasonably *low*.

In the case of Smyth et al. v. Ames et al., this Court quoted the following from Justice Brewer:

"It must be remembered that these roads are competing roads; *that competition tends to a reduction of rates*—sometimes as the history of the country has shown, *below that which affords any remuneration to those who own the property.*"

Smyth et al. v. Ames et al., 169 U. S., p. 542.

LXXXVIII.

If Competitive Rates Are to be Used as a Standard for Fixing Noncompetitive Rates, the Rates on Low Class Traffic Will Have to be Used as a Standard for Fixing Rates on High Class Traffic.

If the low rates which prevail at competitive points are to be used as a standard for fixing the rates to noncompetitive points, the rates on low-class traffic will have to be used as a standard for fixing rates on high-class traffic.

To illustrate my meaning: The first-class rate from New Orleans to Atlanta is $1.03 per hundred pounds; while the rate on Class D from New Orleans to Atlanta is only 20 cents per hundred pounds; thus showing a difference of 83 cents per hundred pounds in favor of Class D, as against Class 1, from New Orleans to Atlanta.

Trans., p. 35.

Now, if the low competitive rates from New Orleans to Atlanta are to be used as a standard for fixing noncompetitive rates from New Orleans to La Grange, why is it that the low rates to Atlanta on Class D are not to be used as a standard for fixing the rates to Atlanta on Class 1? Why cannot the argument be made, that if railroad companies have, for a long series of years, carried traffic known as Class D from New Orleans to Atlanta for 20 cents per hundred pounds, the presumption is that it has afforded them "a fair profit," or "they would not engage in the business;" and if 20 cents per hundred pounds affords "a fair profit" for carrying Class D from New Orleans to

Atlanta, the higher rate charged by them from New Orleans to Atlanta upon Class 1 must be unreasonably high. And yet, if any one should seriously contend that the carriers of this country ought to be compelled to charge on the lower classes of traffic as high rates as are charged on the higher classes, the contention would be regarded as preposterous.

It is certain, however, that precisely the same fact which compels carriers to accept exceedingly low rates to *all* points on the *lower* classes of traffic, compels them to accept exceedingly low rates to *competitive* points on *all* classes of traffic; and the sole compelling fact in both cases is competition. The reason why low-class traffic can only pay very low rates is because of competition between *product and product.*

Class D embraces grain, hay, etc. Those articles shipped from New Orleans to Atlanta come in competition at Atlanta with the same articles shipped from Memphis, Louisville, Cincinnati, etc.; and therefore those articles, if shipped from New Orleans, must be carried at a sufficiently low rate to enable them to compete in Atlanta with the same articles that are shipped from other markets.

In a word, the only reason why exceedingly low rates are charged upon the *lower* classes of traffic is that *competition* between *product and product* compels it; the only reason why rates to Atlanta on *all* classes of traffic are less than rates to La Grange, is that the competition between railroad and railroad, and between market and market, which exists at Atlanta, but does not exist at La Grange, compels it. If competition is to have the effect to reduce local rates to the level of competitive rates, it should also have the effect to reduce the rates on high-class traffic to the level of the low-class rates.

LXXXIX.

Railroad Officials Do Not "Have Everything Their Own Way" in Making Rates.

In the case of I. C. C. v. E. T. V. & G. Ry. Co. et al., Judge Severens said:

"But it is to be remembered that the railroad business of the country is conducted by able men, animated, as it is right to suppose, with the desire to promote the interests of those whom they serve. Further, to promote the efficiency of their work, the officers of the various companies have their associations for the purpose of comparing, studying and adjusting the rates of traffic on their several lines. *In the absence of the other party, they have everything their own way.* It would be expecting something not encountered or expected in other branches of business if we anticipated that they would assume a judicial attitude towards those with whom their business is to be done."

85 Fed. Rep., p. 112; reversed, 181 U. S., p. 1.

Judge Severens is correct in saying that railroad traffic managers are animated with a desire to promote the interests of those whom they serve. But experience has taught them that the most effective way to promote those interests, is to promote the interests of the patrons of their roads. This is not attributing to railroad officials any charitable or benevolent motive. On the contrary, it is conceding that they are intelligently selfish.

The error of Judge Severens consists in the statement that railroad traffic managers in studying and adjusting the rates of traffic on their several lines act "in the absence of the other

party," and that "they have everything their own way." The error is quite a popular one, and it grows out of a want of familiarity with the practical method of rate-making in this country. *At the present day, it cannot be said that railroad traffic managers make their rates at all.*

So far as rates to and from *competitive* points are concerned, they are fixed inexorably, and absolutely, by competition. A traffic manager has nothing to do but to ascertain the rates which his rivals are offering to accept, and adopt, or closely approximate those rates, or abandon the competitive traffic.

As to rates to and from local stations, a railroad traffic manager, in many of the States, is restricted by State railroad commissions; and in all of the States he is restricted by competition between product and product, and between market and market. Those kinds of competition have a controlling influence upon the rates that can be charged to and from even the most strictly local stations on a road. To illustrate: Cotton is raised on the line of the Atlanta & West Point Railroad, and it is shipped from many of the local stations on that road. But that cotton is raised and shipped in competition with cotton raised upon other railroads. The traffic manager of the Atlanta & West Point Railroad must accept such rates on cotton from its local stations as will enable that cotton to be carried and sold in the markets of the world, in competition with cotton raised upon the lines of other railroads, or the cotton cannot be moved at all. In that event the Atlanta & West Point Railroad will lose the revenue that it might otherwise realize from the transportation of cotton from its local stations.

Again: If the cost of producing cotton, added to a certain rate charged for transportation, exceeds the price which can be

obtained for cotton in the market, the cotton will not move from the local stations; and in that event also, the Atlanta & West Point Railroad will lose the revenue which it might otherwise realize from its transportation. It is necessary, therefore, that the traffic manager acquaint himself, not only with the rates which other railroads are accepting for the transportation of cotton, for similar distances, but also with the cost of producing cotton, and with the price at which it is selling; and this he cannot do, without full consultation with the farmer who raises the cotton, and the merchant who buys it. The same is equally true of corn, wheat, and other grain, of live stock, and in fact, of everything produced along the line of a railroad and shipped from its local stations. Whenever any of those products are offered for shipment at a local station, they are offered with a full knowledge that their transportation must be conducted in competition with the transportation by other railroads of similar products, destined to common or competing markets; and such competition is as controlling, though not in the same degree, as that which exists at those cities where numerous rival lines of railroad intersect.

The Commission, in speaking of classifications made by railroad associations, says:

"But in these associations, when in session for the making of rates, each railroad official has, to some extent, had the district which was served by his road behind him; he has felt the pressure of the interests there, and contended for them as against the interests in classification represented by others, not only because it was desirable that the roads should favor the policy its patrons favored, but also *because the same policy was likely to be beneficial to both.*

"The result necessarily is that a classification made by a rail-

road association represents a series of compromises, *to which not only the railroads are parties, but in a certain sense business interests and sections of country also; these in many cases being admitted by their representatives to the consultations upon a subject so vitally concerning their interests, and allowed to present their views.*"

1 Ann. Rep., I. C. C. (1887), p. 31.

In an extract from Senate Report No. 1394, Finance Committee, second session, Fifty-third Congress, published by the Government under the title "Wholesale Prices, Wages and Transportation," it is said that:

"These are the general rules under which classifications are constructed, and while to a large extent controlling, classifications are, notwithstanding, in a great measure a series of compromises, the participants of which are not alone the railroads, but also the shippers and representatives of business interests throughout the country, the latter being afforded ample opportunity to join with the railroads in the discussion as to the proper classification of articles of shipment affecting their interests."

Wholesale Prices, Wages and Transportation, p. 404.

Judge Severens is therefore in error, when he states that traffic officers in "studying and adjusting the rates of traffic on their several lines," act "in the absence of the other party, and have everything their own way."

XC.

Railroads Do Not and Cannot Even Up Their Profits by Overcharging at Local Stations.

Counsel for appellant, in the Circuit Court, quoted a portion of the following extract from the opinion of Judge Severens, in the case of Interstate Commerce Commission v. E. T. V. & G. Ry. Co. et al.:

"If railway carriers engage in a competitive struggle for business at a place where they meet and underbid each other, or other carriers, to a point which is not in itself remunerative, can they turn back on the line, and taking advantage of the conditions existing at other localities, arising either from the fact that there is no opportunity for competition, or from the fact that by concert of the carriers there is none, charge such rates for the shorter haul as shall make good their lack of profit in competitive business, and even up the profit on their whole business to the point they set before themselves as reasonable? To the proposition thus roundly stated, no doubt counsel for the carriers would say that they could not contend for it, and yet this is the result reached by the not very indirect steps of the argument."

85 Fed. Rep., p. 115; reversed 181 U. S., p. 1.

I respectfully deny that the argument of "counsel for the carriers" either directly or indirectly leads to any such proposition as the Judge stated so "roundly."

I have heretofore shown that the Atlanta rates yield some profit (though it may be very small) over the additional cost of the movement of the Atlanta traffic. The appellee carriers in

this case, therefore, do not "engage in a competitive struggle" . . . "to a point which is not in itself remunerative." If the rates accepted to Atlanta yield *any* profit over the additional cost of the movement of that traffic, they are "remunerative" to some extent, though the remuneration may be very small.

181 U. S., pp. 18-19, E. T. V. & G. Ry. Co. v. I. C. C.

I have heretofore shown that the La Grange rates are just and reasonable in and of themselves. Now, if the La Grange rates be just and reasonable, how can it be truthfully said that the appellee carriers "turn back on the line" and "take advantage" of the conditions existing at that point?

If the rates charged by the carriers to Atlanta are remunerative to any extent, however small it may be, there is no "loss" sustained by the carriers in the transportation of the Atlanta traffic; and therefore there is no occasion for them to "even up," by increasing their shorter distance rates.

181 U. S., pp. 18-19, E. T. V. & G. Ry. Co. v. I. C. C.

If Judge Severens means that railroads must charge at competitive points, the same rate of profit as is charged at noncompetitive points, then they must abandon competitive traffic altogether. If he means that railroads must accept upon noncompetitive traffic whatever rate of profit they may be forced to accept upon competitive traffic, then the Southern railroads must go into bankruptcy; because they can no more afford to carry all of their traffic at the low rate of profit which they are forced to accept at competitive points, than a merchant can afford to sell his entire line of goods at the same rate of profit which he is forced to accept upon certain staple articles.

XCI.

Appellant's Argument that the Atlanta Rates are Unreasonably Low.

Counsel for appellant may contend: "That the rates to Atlanta are unreasonably low, because they do not pay operating expenses, and, in addition, interest on bonds, other fixed charges, and dividends; and therefore that part of these burdens which should be borne by Atlanta traffic are placed upon traffic to La Grange, and other localities treated as noncompetitive or local stations – *thus rendering the La Grange rates excessive in themselves.*"

It is true that the rates to Atlanta do not pay their full proportion of "operating expenses;" that they do not pay anything toward "interest upon bonds," and other "fixed charges;" and, of course, it is true, that they do not pay anything toward reasonable "dividends."

It is also true that the Atlanta traffic ought to pay, provided it could be compelled to do so, its full proportion not only of "operating expenses," but also of "interest," other "fixed charges," and "dividends."

It is also true that to the extent that the Atlanta traffic fails to pay its full proportion of "operating expenses," "interest," other "fixed charges," and "dividends," those burdens have to be placed upon traffic to La Grange and other noncompetitive stations; *or they have to be borne by the stockholders of the company.* And such burdens upon stockholders have been so great

in Southern territory as to cause the utter bankruptcy of many railroad companies. I have shown in Section LXXXIX that there are many reasons why the rates to La Grange and other noncompetitive stations cannot be increased to such an extent as to render them "excessive in themselves."

If then, the La Grange rates are not "excessive in themselves," the question arises whether the Atlanta rates are illegal, merely because competition at that point has reduced them so low that while they pay something more than "the additional cost of movement" of the Atlanta traffic, they cannot be made high enough to pay their fair proportion of "operating expenses," "interest" on bonds, other "fixed charges," and "dividends."

The proposition for which counsel may contend can be put in syllogistic form, as follows:

1. Rates charged to longer distance competitive points do *not* yield reasonable compensation for the service performed by the carrier.

2. The loss sustained by the carrier on traffic to longer distance competitive points is made up by increasing the rates to shorter distance points.

3. Therefore carriers ought not to be allowed to charge less for a longer, than for a shorter distance, over the same line, in the same direction, etc.

The first fault in this syllogism is to be found in the major premise; and it is the fault of indefiniteness. How are we to decide what is a "*reasonable*" compensation for transportation to a *competitive* point.

My contention is, that if *competitive* rates will pay anything over and above "*the additional cost of movement*" of the competitive traffic, it is right and *reasonable* that they be accepted by the carrier, rather than abandon the competitive traffic.

181 U. S., pp. 18–19, E. T. V. & G. Ry. Co. v. I. C. C.

On the other hand, counsel for appellant may contend that *competitive* rates ought to be sufficient to pay not only the "*additional cost of the movement*," of the competitive traffic, but also the full proportion of that traffic toward "operating expenses," "interest," and other "fixed charges," and "dividends."

Counsel's proposed method of rate construction is correct in theory; and it would be followed by every railroad traffic manager in the country, if it were practicable to do so. But the utter impracticability of constructing rates upon the theory contended for by counsel was demonstrated by the Commission itself, in 1887, In Re Southern Railway & Steamship Association (sometimes cited as In Re Louisville & Nashville Railroad Company). In that case, the Commission said:

"This distinction between *the cost of movement* and *the fixed charges* often becomes of importance in such cases as that of the lumber trade just mentioned. That trade is new; the roads which take it were built without anticipating its springing up, and their managers made their calculation for business to meet the whole cost of operation in reliance upon such traffic as was then apparent or probable. The *fixed charges* of the road may, for purposes of illustration, be assumed to equal one-half of the whole, *the cost of movement* of freight the other half. The rates laid were doubtless calculated to cover the whole, with a margin of profit, and were so laid that all traffic would contribute toward both *fixed charges* and *cost of movement*. But now

comes this new business, and from the nature of the case low rates are a necessity to it; it can pay perhaps little if anything more than half what is paid by other traffic. But taking it will not increase perceptibly *the fixed charges* of the road, because those are made up of the items that must be paid whether the traffic is large or small. What is added to the cost by taking it *is simply the expense of its own handling and movement;* and upon the supposition made, there might perhaps be gain to the road instead of loss, in taking it at anything above half the rates which are levied upon other traffic corresponding to its classification. *It might, therefore, be carried at such rates without wrong to any one.*"

1 Interstate Commerce Rep., p. 284, right col., In Re Southern Ry. & S. S. Association.

What is said by the Commission in reference to the lumber trade, is equally applicable to all the lower kinds of freight, such as iron ore, stone, sand, brick, cement, pig iron, etc. If the courts once hold that each and every kind of traffic must be charged such rates as will pay not only the "additional expense incurred" by the carrier in the transportation of that particular kind, but also the full proportion which such traffic ought to contribute toward all the "operating expenses," "interest," other "fixed charges," and "dividends," then *the courts will put an absolute embargo upon two-thirds of the tonnage now carried by the railroads of this country.*

The Commission in its First Annual Report to Congress said:

"It was very early in the history of railroads perceived that if these agencies of commerce were to accomplish the greatest practicable good, the charges for the transportation of different articles of freight could not be apportioned among such articles

by reference to the cost of transporting them severally, for this, if the apportionment of cost were possible, would restrict within very narrow limits the commerce in articles whose bulk or weight was large as compared with their value. On the system of apportioning the charges strictly to the cost, some kinds of commerce which have been very useful to the country, and have tended greatly to bring its different sections into more intimate business and social relations, could never have grown to any considerable magnitude, and in some cases could not have existed at all, for the simple reason that the value at the place of delivery would not equal the purchase price with the transportation added"

See First Annual Report Interstate Commerce Commission (1887), p. 30.

What is said by the Commission with reference to the impracticability of apportioning the charges for the transportation of different articles of freight among such articles by reference to the cost of transporting them severally, is equally applicable to the theory that the charges for the transportation of competitive and noncompetitive freight ought to be apportioned between them by reference to the cost of transporting them, severally. The reason why low-grade traffic cannot be made to pay in proportion to the cost of its transportation, is, as the Commission properly states, because the charge for carriage would be greater than it could bear. And the reason why *competitive* traffic cannot be made to pay in proportion to the cost of transporting it, is because the charge for carriage upon that basis by the longer line would ordinarily be greater than by the shorter line; the longer line would, therefore, be driven out of competition; the shorter line would secure a monopoly, and all competition would be destroyed.

The second fault in the syllogism is to be found in the minor premise. In that premise it is erroneously assumed that a *loss* is sustained by the Atlanta & West Point Railroad Company on the Atlanta traffic. But if the Atlanta rates pay anything over and above the "additional cost of movement," so far from there being any *loss* to the Atlanta & West Point Railroad Company on the Atlanta traffic, there is a "margin of *profit*" *in carrying that traffic.* In other words, *there is no loss at all.*

181 U. S., pp. 18, 19, E. T. V. & G. Ry. Co. v. I. C. C.

The real ground of counsel's objection is, that the margin of profit is not as great as it should be; and the answer to the objection is, that the profit, however small it may be, which that company may derive from the Atlanta traffic, enables it to improve and increase its facilities for handling the La Grange traffic, as well as the other traffic on its line.

The third and greatest fault in said syllogism is to be found in the conclusion which is sought to be drawn from the major and minor premises.

If it be true that rates charged to longer distance competitive points do not yield proper compensation; and if it be true that their failure to do so causes a loss to the carrier, it is manifest that if the rates to the shorter distance points be reduced to the same as the rates to the longer distance points, *the loss to the carrier will be increased, instead of being diminished.* In other words, if the courts compel carriers in the Southern territory to accept to their noncompetitive stations rates as low as those which competition compels them to accept to longer distance competitive points, the result must be a disastrous loss of revenue to the Southern railway system.

In the case at bar, the loss to the Atlanta & West Point Railroad would amount to $63,331.56 per annum.

Trans., p. 90.

In the Georgia Railroad Commission cases, the following language was used by the U. S. Circuit Court of Appeals:

"There may be a wide difference between a rate or amount of compensation that would give full remuneration for the service in carrying the competitive traffic, and that remuneration therefor which competitive conditions will allow the carrier to receive. The full measure of reasonable remuneration to the appellees for the carriage of competitive freight to Atlanta would require a rate sufficient to pay not only the additional cost of moving the competitive traffic, but also that proportion of operating expenses, fixed charges, and reasonable profit to the owners of the carrier lines which the tonnage of the competitive traffic bears to the total freight tonnage of the carrier. And that rate would, doubtless, be applied and enforced if the circumstances and conditions permitted it to be done. But as no higher rate than a full compensatory one should be applied and enforced under the most favorable circumstances and conditions, it is manifest that it cannot be applied to traffic that is subject to severe competitive conditions."

I. C. C. v. W. & A. R. R. Co. et al., 93 Fed. Rep., p. 90.

XCII.

It is Impossible to Increase the Atlanta Rates Without Stifling the Competition that Has Existed There for Many Years.

Suppose it be conceded "that the Atlanta rates are unreasonably low," in the sense that they do not pay, in addition to "cost of movement," their full proportion of "operating expenses," "interest," other "fixed charges," and "dividends," how is it to be remedied except by stifling the competition, which has reduced those rates to their present level?

If all the railroads at Atlanta were to agree to cease their competition at that point, the Atlanta rates from New Orleans would, in all probability, become higher than the La Grange rates; but would such an agreement be lawful?

The fifth section of the Act to Regulate Commerce expressly prohibits every contract, agreement, or combination for pooling; and pooling was prohibited because it was supposed to have a tendency to stifle competition.

In the case of Ex Parte Koehler, Judge Deady said:

"The places between which competition in transportation exists between water craft and railways, *or even the latter*, always will, and must, send and receive freight at lower rates than others not so favored."

31 Fed. Rep., p. 321, Ex Parte Koehler.

Now, if it be true that places between which competition in

transportation exists always will, and must, send and receive freight at lower rates than others not so favored, it is impossible to prevent such competitive rates from becoming so low, that in many instances, while they may pay more than the "additional cost of movement," they will not pay anything toward "interest," other "fixed charges," and "dividends,"—unless the carriers enter into a contract, combination or conspiracy to limit or stifle the competition,—a thing which they are forbidden by law to do.

XCIII.

The Law Does Not Prohibit the Acceptance of Rates that Are "Unreasonably Low in Themselves."

Suppose it be conceded that the Atlanta rates are "unreasonably low," in the sense that they do not pay, in addition to "cost of movement," their full proportion of "operating expenses," "interest," other "fixed charges," and "dividends," what provision of law is violated by accepting them?

The first section of the Act to Regulate Commerce, provides that all charges, etc., "shall be reasonable and just." If the word "reasonable" had been construed to mean reasonably high, as well as reasonably low, then it would have been unlawful to accept rates which are "unreasonably low." The Commission, however, has held that the word "reasonable," as used in the first section in reference to rates, means reasonably low, *but not reasonably high;* and that the Commission has no power to order competitive rates to be advanced, even where they are so low "that persistence in making them would be ruinous."

In construing the word "reasonable," as used in the first section, the Commission said:

"There is consequently no little force in the claim made by respondent that charges are not reasonable and just, when they are so low as to be unremunerative to the carrier—so low that its action in continuing to make them would lead directly to bankruptcy. Possibly, if the statute were to be interpreted without any aid from its history, and with no other knowledge of its purpose, aims and ends than such as may be derived from its provisions, a holding that a rate unreasonably low was forbidden might be justified, or at least might be urged upon plausible argument.

"But every statute is to be read in the light of its history and of the evils it was intended to redress."

"After discussing the history of the statute and its purposes, the Commission said:

"If such was the primary purpose of the statute, as unquestionably it was, then the proper meaning of the term 'just and reasonable,' as employed in it, is apparent. They were employed to establish a *maximum* limitation for the protection of the public, *not a minimum limitation* for the protection of reckless carriers against their own action."

2. I. C. Rep., pp. 146, 147, In Re C. St. P. & K. C. R. Co.

The fact, therefore, that the Atlanta rates may be "unreasonably low in themselves," in the sense above referred to, constitutes no violation of the first section of the act; and it constitutes no violation of the third or fourth sections, unless it can also be shown that the La Grange rates are unreasonably *high*, in themselves."

I have heretofore shown that the La Grange rates are *not* unreasonably high; but on the contrary are reasonably low.

XCIV.

A Large Proportion of the Traffic of the Country is Necessarily Carried at Rates which Do Not Pay Anything Toward "Interest," Other "Fixed Charges," or "Dividends."

It is stated by the Commission that the railroad classifications now in use in this country embrace from five thousand to seven thousand items.

11 Ann. Rep., I. C. C. (1897), p. 66.

The classification which is used by the Georgia Railroad Commission divides those five thousand or seven thousand items into twenty-two classes, and designates the first fourteen of them as classes 1, 2, 3, 4, 5, 6, A, B, C, D, E, F, G, H.

The Georgia Railroad Commission is authorized by the laws of that State to fix reasonable maximum railroad rates; and in pursuance of that authority, it has established a "Standard Freight Tariff," a copy of which, so far as it relates to the first fourteen classes, has been filed in this case as evidence for the appellant.

Trans., pp. 245, 246.

By reference to said tariff it will be seen that for a distance of 300 miles, the rate on class 1 is fixed at 80 cents per hundred pounds; while the rate on class G is fixed at only 11 cents per hundred pounds. In other words, the rate on class 1 is more than seven times as much, per hundred pounds, as the rate on

class G, notwithstanding both of those classes of freight may be carried for the same distance, over the same railroad, in the same train, and even in the same car.

If it be held that a rate is unlawful, because it is unreasonably *low*, in the sense that it fails to pay "interest," other "fixed charges," and "dividends," it must be held that a rate is unlawful, as being unreasonably *high*, because it pays more than "interest," other "fixed charges," and "dividends."

If the Georgia Railroad Commission rate on class 1 pays more than "cost of movement," "interest," other "fixed charges," and "dividends," I suppose it is to be held to be unlawful, because it is unreasonably *high*. But if the rate on class 1 pays no more than "cost of movement," "interest," other "fixed charges," and "dividends," it is manifest that the rate on class G, which is less than one-seventh of the rate on class 1, must fall very far short of paying "interest," other "fixed charges," and "dividends," in addition to the "cost of movement," and I suppose that it must, for that reason, be held to be unlawful, because it is unreasonably *low*.

By reference to the "Standard Freight Tariff" it will be seen that the rates on classes 4 and H are the same; and that the rates on classes 6, A and B are the same; but, with those exceptions, the rates on no two of the remaining classes are the same. Are we to assume that each and every rate on the remaining classes is unlawful because it pays either more or less than the cost of movement, interest, other fixed charges and dividends?

Under the Georgia Railroad Commission Classification, class 1 may embrace dry goods; while class G may embrace cotton seed and its products. In fixing the rates upon dry goods, and

cotton-seed products, respectively, the Georgia Railroad Commission did not give the slighest consideration to the question as to whether the rates either upon dry goods, or cotton-seed products, paid more or less than the "cost of movement," "interest," other "fixed charges," and "dividends." The Commission had sufficient intelligence to know that it is an utter impossibility to ascertain exactly what any particular rate pays; and therefore, instead of trying to construct a tariff upon an impracticable and theoretical basis, it undertook to construct one upon a practicable, common sense, commercial basis. It knew that it does not cost a railroad company materially more to carry one hundred pounds of dry goods, than it costs to carry one hundred pounds of cotton-seed products, a distance of three hundred miles. It knew that cotton-seed products could not be moved at all, if they were charged such rates per hundred pounds, as would be perfectly fair and reasonable for the transportation of dry goods an equal distance; and, therefore, with an utter disregard of the element of cost, the Commission fixed the rate upon cotton-seed products at less than one-seventh of the rate which it allowed upon dry goods. It said to the railroads in effect: You must carry cotton-seed products, at a rate which may fall far short of paying the "cost of movement," together with "interest," "fixed charges," and "dividends; but I will allow you to charge upon dry goods a rate which will probably pay very much more than the "cost of movement," together with "interest," other "fixed charges," and "dividends." If you carry the farmer's cotton-seed products, at less than cost, he can very well afford to pay you much more than cost, for the transportation of such dry goods as may be used by himself and his family.

The Standard Freight Tariff of the Georgia Railroad Commission is constructed upon the same principle as that which governs the Railroad Commissions of other States, and which had

been employed by railroad traffic managers long before any State Railroad Commissions were created. They may differ in their classifications; and they may differ as to the rates assigned to the different classes; but all freight tariffs are based upon commercial considerations,—without attempting to ascertain or consider the relative cost of moving the various articles assigned to the different classes.

Where severe competition exists, as at Atlanta, it is impossible for carriers to be controlled, either by the relative cost, or the relative value of the service; because each carrier must accept *the* lowest rate offered by any one of the competing lines, or all, except one, must abandon the competitive traffic.

If it be held that it is unlawful for carriers to accept competitive rates which do not pay "interest," other "fixed charges," and "dividends," in addition to cost of movement, it will as certainly prevent the carriage of competitive traffic, as the application of the same principle will prevent the transportation of low grade traffic, which probably constitutes two-thirds of the railroad tonnage of this country.

XCV.

If Competition Cannot Justify Competitive Rates which are Not Fully Remunerative, Competition Will Have to be Abandoned Altogether.

It was said by the U. S. Circuit Court of Appeals in the Georgia Railroad Commission cases that:

"As no higher rate than a full compensatory one should be applied and enforced under the most favorable circumstances

and conditions, it is manifest that it cannot be applied to traffic that is subject to severe competitive conditions."

I. C. C. v. W. & A. R. R. Co. et al., 93 Fed. Rep., p. 90.

To paraphrase the language of this Court, just quoted, it is manifest that rates, such as the La Grange rates, cannot be applied to traffic that is subject to severe competitive conditions, as is the Atlanta traffic.

The local traffic of a railroad is the only traffic upon which it can rely, with any degree of certainty, to yield the revenue necessary to pay operating expenses, and a fair return upon the value of that which it employs for the public convenience. A railroad company has the right to so adjust its local rates as that, in connection with such revenue as it may be able to secure from competitive traffic, they will pay operating expenses, fixed charges, and a fair return upon the value of the investment. Such local rates are no more than fairly compensatory, and therefore they are not unreasonably high in themselves. A basis of local rates so adjusted is always higher per ton per mile than can be obtained upon traffic that is subject to severe competitive conditions; and if carriers are to be prohibited from accepting less rates on severely competitive traffic than they are compelled to charge upon their local traffic, they must necessarily abandon the competitive traffic—and whenever they do so, railroad competition in this country will, of course, be at an end.

XCVI.

The Misapplication by Counsel of the "Nebraska Maximum Rate Case."

Counsel for appellant in the Circuit Court quoted the following from the opinion of this Court in Smyth v. Ames, 169 U. S., p. 541, known as the "Nebraska Maximum Rate Case:"

"Nor can the carrier justify unreasonable high rates on domestic business, upon the ground that it will be able only in that way to meet losses on its interstate business. So far as rates of transportation are concerned, domestic business should not be made to bear the losses on interstate business, nor the latter the losses on domestic business."

If the word "local" be substituted for the word "domestic," and the word "competitive" be substituted for the word "interstate," the application, which counsel desires to make of the language quoted, will be obvious.

The quotation, however, has no application, because in the case at bar, the appellees do not seek to justify "unreasonably high rates" on their local business. They insist that the La Grange rates are not "unreasonably high." They also insist that the Atlanta traffic is not carried at "*a loss.*" The uncontradicted testimony in this case is, that Atlanta traffic pays something more than the cost of its movement; a fact which demonstrates that instead of its being carried at a *loss*, it is carried at a profit, though the profit may be very small. The appellees, therefore, have no occasion to justify the La Grange rates upon the ground that they are necessary to meet *losses* incurred by reason of their acceptance of the Atlanta rates.

XCVII.

The Atlanta Rates are Lawful Notwithstanding Higher Rates Might be Charged to Atlanta, if Competition at That Point Would Permit.

The Atlanta rates are fixed absolutely by competition, which prevents the appellees from securing at that point rates which are fully compensatory. And the question recurs, though in a slightly different form, whether competitive rates are unreasonably low, within the purview of the law, simply because higher rates might reasonably be charged, if competition would permit.

In the language of the U. S. Circuit Court of Appeals:

"What is a reasonable action or a reasonably remunerative rate for carriage at a given time and place necessarily has relation to the circumstances and conditions bearing upon the actor or upon the carrier at the time and place."

93 Fed. Rep., p. 91, I. C. C. v. W. & A. R. R. Co. et al.

The circumstances and conditions bearing upon the carriers at Atlanta compel them to accept rates, which, while they do not pay anything toward "interest," other "fixed charges," or "dividends," do pay more than the cost of movement of the Atlanta traffic; and therefore yield some profit, though it may be very small. I contend that such rates, so forced upon the carriers by competition, are reasonable, within the purview of the law, notwithstanding very much higher rates would also be reasonable, if the circumstances and conditions at Atlanta were such that the carriers could obtain higher rates than those which they now ac

cept. The error of counsel for the appellant consists in supposing that in order for a rate to be reasonable, it must be represented by some fixed and invariable amount; whereas the truth is that the amount of a reasonable rate not only may, but should, vary with the circumstances and conditions under which it is charged, or accepted.

XCVIII.

Competitive Rates May be Reasonably High, and Yet the Competition which Forces Their Acceptance May Justify a Lesser Charge for the Longer Haul.

Counsel for appellant, in the Circuit Court, contended that:

"If the rates to competitive points are reasonably high, notwithstanding competition, then competition is no justification for a greater charge for the shorter haul."

Competition is not relied on in this case as a justification for a greater charge for the shorter haul to La Grange. It is relied upon as a justification of a lesser charge for the longer haul to Atlanta.

Rates to competitive points may be reasonably high, considering the competitive circumstances and conditions under which they are accepted, and yet they may be so low as not to be *fully* compensatory, though they may yield *some* profit over and above the additional cost of the movement of the competitive traffic. In such a case I contend that the competition, which forces the acceptance of rates which, though reasonably high under the circumstances and conditions under which they are accepted,

might reasonably be materially higher, were it not for the competition, does justify a lesser charge for the longer haul to a competitive point, like Atlanta, than for the shorter haul to an intermediate local point, like La Grange.

XCIX.

The Fact that the Greater Portion of the Freight Traffic Carried by Appellees is Competitive is No Evidence that the Rates on the Local Traffic are Too High.

Counsel for appellant, in the Circuit Court, insisted that three-fourths of appellees' traffic is competitive; that appellees' competitive rates have paid a reasonable profit; and therefore that the local rates must be unreasonably high.

There are the following competitive points on the line of the Western Railway of Alabama, and the Atlanta & West Point Railroad, viz.: Atlanta, Opelika, Montgomery and Selma.

Trans., pp. 352, 353.

The competitive traffic of the line composed of the Western Railway of Alabama, and the Atlanta & West Point Railroad, therefore consists of the following, viz.:

1. Traffic from Atlanta, and points east thereof, to Selma, and points beyond.

2. Traffic from Atlanta, and points east thereof, to Montgomery, and to points north thereof, and to points south thereof, other than New Orleans.

3. Traffic from Atlanta, and points east thereof, to Opelika, and to points north, and south thereof.

4. Traffic from Selma, and points beyond, to Montgomery, and points north, and south thereof.

5. Traffic from Selma, and points beyond, to Opelika, and points north, and south thereof.

6. Traffic from Selma, and points beyond, to Atlanta, and points beyond.

7. Traffic from Montgomery and points north, and south thereof, to Selma, and to points beyond.

8. Traffic from Montgomery and points north, and south thereof, to Opelika, and to points north and south thereof.

9. Traffic from Montgomery, and from points north, and from points south thereof (other than New Orleans), to Atlanta, and points beyond.

10. Traffic from Opelika and from points north, and south thereof, to Selma, and points beyond.

11. Traffic from Opelika, and points north, and south thereof, to Montgomery, and points beyond.

12. Traffic from Opelika, and points north, and south thereof, to Atlanta, and points beyond.

13. Traffic from New Orleans, via Montgomery, to Atlanta.

There is no evidence whatever in the record as to whether the the rates upon any of the foregoing descriptions of traffic, except

the one numbered 13, have, or have not paid a reasonable profit; and as to the traffic numbered 13, *i. e.*, traffic from New Orleans, via Montgomery, to Atlanta, while there is testimony that in most cases, the revenue derived from it "is sufficient to cover the cost of transportation and terminal charges," there is no testimony that it is sufficient to pay anything toward fixed charges or dividends.

Trans., p. 367.

There is evidence that the thirteen descriptions of competitive traffic mentioned above, taken in connection with the local traffic, pay a dividend of about 6 per cent on the stock of the Atlanta & West Point Railroad, and a dividend of about 3 per cent on the stock of the Western Railway of Alabama; but how much the local rates contribute to said dividends, or how much the descriptions of traffic numbered from 1 to 12 contribute to said dividends, there is no evidence in the record to show.

The descriptions of traffic, numbered from 1 to 12, may not be so severely competitive as the description of traffic numbered 13: *i. e.*, the traffic from New Orleans, via Montgomery, to Atlanta.

The descriptions of traffic numbered from 1 to 12 inclusive may pay not only the cost of movement and terminal expenses, but they may also contribute materially toward the payment of fixed charges and dividends.

It is obvious that whatever proportion the competitive traffic may bear to the total traffic of a railroad, that railroad can only obtain such rates upon the competitive traffic as its competitors may see proper to offer; and whether the competitive traffic contributes much or little toward fixed charges and dividends, such an amount as it may contribute goes that far in relief of the local traffic.

C.

THERE IS NO SUCH COMPETITION AT LA GRANGE AS AT ATLANTA.

The Commission, in its Report and Opinion, says:

"Another fact requiring consideration is, that La Grange is itself a competitive point, *whenever the railroad carriers to that city see fit to actively engage in competition.* The Macon & Birmingham Railroad connects La Grange with Macon over a distance of 105 miles, and that road, in connection with the Southern Railway, *can* carry traffic over about the same distance between Atlanta and La Grange."

"The carriers to La Grange can at will show and claim the existence of strong market and carriers' competition at La Grange, as forcing rates thereto down to the Atlanta basis, or they can, as they do, subject that city to through rates which are merely combination of the rates based on Atlanta or Macon."

Trans., p. 29.

The Macon & Birmingham Railroad is a short line only 97 miles long. It runs from La Grange to Sofkee, where it connects with the Georgia Southern & Florida Railroad, over which it has a trackage arrangement for eight miles between Sofkee and Macon.

Trans., p. 357.

During the year ending June 30, 1898, the Macon & Birmingham Railroad had only four locomotives and 140 freight cars. Its total earnings were $65,129.66; while its operating expenses were $77,511.87. There was a deficit of $12,382.21 in its oper-

tions for that year, and a total deficit at the end of that year of $42,121.80.

Trans., pp. 269, 270.

The Macon & Birmingham Railroad has no line of its own to New Orleans. It has no part of any railway system that reaches New Orleans. It could not form a line from La Grange to New Orleans without using a portion of the appellees' line, or a portion of the Central of Georgia Railway, or a portion of the Southern Railway.

The appellees could not afford to join with the Macon & Birmingham Railroad in making through rates from New Orleans to La Grange, which would be as low as the rates which appellees charge from New Orleans to Atlanta; because were they to do so, appellees would be charging less to La Grange than they charge to other local stations on their line between La Grange and New Orleans.

The Southern Railway could not afford to join with the Macon & Birmingham Railroad in making through rates from New Orleans to La Grange which would be as low as the rates which appellees charge from New Orleans to Atlanta; because were it to do so, the Southern Railway would be charging less to La Grange than it charges to certain local stations on its own line between Birmingham and Woodbury.

The Central of Georgia Railway could not afford to join with the Macon & Birmingham Railroad in making through rates from New Orleans to La Grange, which would be as low as the rates which appellees charge from New Orleans to Atlanta; because were it to do so, the Central of Georgia Railway would be charging less to La Grange than it charges to certain local stations on its own line between Birmingham and Macon.

Trans., pp. 358, 359.

CI.

There is No Concert Between Carriers to Stifle Competition at La Grange.

The Commission, in its Report and Opinion, seeks to create the impression that there is a combination or agreement between the Atlanta & West Point Railroad, and the Macon & Birmingham Railroad, not to compete at La Grange on the same rates as obtain at Atlanta. There is not a scintilla of testimony that any such combination or agreement now exists, or ever has existed. I have shown in the last preceding section why it is that neither the Southern Railway, nor the Central of Georgia Railway, can afford to join with the Macon & Birmingham Railroad in making through rates from New Orleans to La Grange, which would be as low as the rates which the appellees charge from New Orleans to Atlanta. Neither the Southern Railway, nor the Central of Georgia Railway, could afford to pick out La Grange, which is a purely local noncompetitive station on the Atlanta & West Point Railroad, and give to it, in the absence of controlling competition at that point, rates from New Orleans, which would be lower than the rates which the Southern Railway, and the Central of Georgia Railway, are charging to local stations on their respective lines, which local stations are nearer than La Grange is to New Orleans. And unless the Macon & Birmingham Railroad can induce either the Southern Railway, or the Central of Georgia Railway, to join in making through rates from New Orleans to La Grange which would be as low as the rates which the appellees charge from New Orleans to Atlanta, it is impossible for the Macon & Birmingham Railroad to create as severe competition at La Grange, as exists at Atlanta.

CII.

There is a Natural Reason Why the Force of Competition at La Grange Should Not be as Great as at Atlanta.

The traffic at La Grange is not sufficient to induce competition of such force as exists at Atlanta.

The population of La Grange is between 4,000 and 5,000; while that of Atlanta is estimated to be 100,000.

Trans., pp. 31, 32.

For the year ending June 30, 1895, the freight carried by appellees from New Orleans to Atlanta amounted to 6,773 tons; while the freight carried by appellees from New Orleans to La Grange amounted to only 100 tons. In other words, the New Orleans-Atlanta traffic was more than sixty times as great as the New Orleans-La Grange traffic.

Trans., p. 40.

This Court has said that the English cases establish the rule that in passing upon the question of undue or unreasonable preference or disadvantage, it is not only legitimate, but proper to take into consideration various elements, and among others "*the relative quantities or volume of the traffic involved.*"

162 U. S., p. 232 T. & P. Ry. v. I. C. C.

In the case of I. C. C. v. Alabama Midland Railway this Court said:

"It seems undeniable, as the effect of the evidence on both

sides, that an actual dissimilarity of circumstances and conditions exists between the cities concerned, both as respects *the volume of their respective trade* and the competition, affecting rates, occasioned by rival routes," etc.

168 U. S., 175, I. C. C. v. Alabama Midland Railway.

If the Macon & Birmingham Railroad could succeed in inducing the Southern Railway, or the Central of Georgia Railway, to join in making through rates from New Orleans to La Grange, the same as the rates to Atlanta, the appellees would have the legal right to meet such competition at La Grange, without being required to reduce their rates to other local stations situated between La Grange and New Orleans; but there is nothing in the Act to Regulate Commerce which would *compel* the appellees to meet the supposed competition at La Grange. They could do so or not, as their interests might dictate; and in deciding upon their course of action, they would be largely governed by the amount of traffic at La Grange. If the volume of traffic at La Grange equalled that at Atlanta, the appellees would probably elect to meet the competition. But if the volume of traffic at La Grange were insignificant, the appellees might elect to abandon the whole of it to the Macon & Birmingham Railroad and its connections, rather than compete for it at the Atlanta rates.

CIII.

Though the Same Markets and Same Lines of Transportation Compete for La Grange Business as for Atlanta Business, They Do Not Compete at the Same Rates to La Grange as to Atlanta.

It may be that New Orleans, Louisville, Cincinnati, New York, and other markets compete with each other in the sale of goods at La Grange, as well as at Atlanta, but in their competi-

tion, they recognize and act upon the fact that the rates to La Grange are higher than those to Atlanta; and so far as this record shows, none of those competing cities has ever demanded, or even requested that the rates to La Grange shall be made as low as to Atlanta.

It may be that the same lines of transportation that can be formed and compete for business from the East and West to Atlanta, can be formed and compete for business to La Grange; but in their competition, they recognize and act upon the fact that the rates to La Grange are higher than the rates to Atlanta; and so far as this record shows, none of those lines of transportation has ever demanded, or even requested that the rates to La Grange be made the same as the rates to Atlanta. The appellees having a through line from New Orleans to La Grange could doubtless arbitrarily put into effect the same rates to La Grange as to Atlanta; but as no rival line has ever offered to compete at the same rates to La Grange as to Atlanta, if the appellees were to arbitrarily accept the same rates to La Grange, as to Atlanta, they would have to accept the same rates to other local stations which are situated between La Grange and New Orleans; or they would be guilty of wilful and unjust discrimination against those stations.

Though the Macon & Birmingham Railroad is a short, weak and unimportant line, it may be within the range of possibility for it to induce its connections to agree upon through rates from New Orleans to La Grange, the same as those to Atlanta; and whenever it and its connections offer to compete at La Grange, *at the same rates as obtain at Atlanta*, the appellees will be justified in meeting such competition, and in reducing their La Grange rates to the same as their Atlanta rates. If the appellees were forced to reduce the La Grange rates under competition, inaugurated by the Macon & Birmingham Railroad and its connections, they would not be compelled to make similar reductions to their

other local stations situated between La Grange and New Orleans; because, in the case supposed, the competition at La Grange would be as effective in the reduction of rates to La Grange, as the competition at Atlanta has been effective in the reduction of rates to Atlanta. But until the Macon & Birmingham Railroad and its connections shall put in the same rates from New Orleans to La Grange as obtain at Atlanta, the appellees have no right to voluntarily discriminate in favor of La Grange as against other local stations which are situated between La Grange and New Orleans.

CIV.

The Alleged Undue Preference in Favor of Opelika.

Counsel for appellant, in the Circuit Court, contended that appellees' rates from New Orleans to Opelika are such that freight can be shipped from New Orleans to Opelika, and pay the local rates from Opelika to La Grange, at a less total cost to the Opelika merchant, than the rates which appellees charge from New Orleans to La Grange. Even if the facts were as contended for by counsel, it is evident that the La Grange merchants can use the Opelika rates as basing rates, and thereby secure as low rates from New Orleans to La Grange, as can be secured by Opelika merchants As a matter of fact, merchants doing business at La Grange may choose between the competitive rates which obtain at Montgomery, and those which obtain at Opelika, and those which obtain at Atlanta; and they naturally select those which make the lowest total combination from New Orleans to La Grange.

CV.

The Complaint that Atlanta Merchants Can Compete with La Grange Merchants, in La Grange.

It is true that the rates from New Orleans to Atlanta, added to the Georgia Railroad Commission rates from Atlanta to La Grange, exactly equal the rates from New Orleans to La Grange; and therefore, if an Atlanta merchant should purchase freight at New Orleans, and have it carried to Atlanta, and thence back to La Grange, the railroad rates paid by him would be exactly the same as those paid by a merchant at La Grange, shipping directly from New Orleans to La Grange.

But the Atlanta merchant would, in addition to the railroad rates, paid by him, pay drayage from the depot in Atlanta to his store, and drayage from his store back to the depot.

The La Grange merchant would pay drayage from the depot in La Grange to his store; but he would not be compelled to pay drayage *from* his store; and to *that* extent at least he would have the advantage of the Atlanta merchant; to say nothing of the advantage which the La Grange merchant would have by reason of his personal acquaintance, and business influence in his own town. Suppose, however, it be said that the Atlanta merchant has the advantage of larger capital, so that he can at least sell on terms of equality in La Grange. While that fact may operate to restrict the sales of La Grange merchants, it gives to the consumers at La Grange a choice between Atlanta merchants and their own.

The consumers are as much a part of the public, as the merchants at La Grange.

CVI.

The Complaint that Atlanta Merchants Have an Advantage Over La Grange Merchants in Competition at Points Between Atlanta and La Grange.

It is true that the rates from New Orleans to Atlanta added to the Georgia Railroad Commission rates from Atlanta to Fairburn, Palmetto, Newnan and Hogansville, are less than the rates from New Orleans to La Grange, added to the Georgia Railroad Commission rates from La Grange to the same points. This results, as heretofore explained, from the fact that the rates from New Orleans to Atlanta are made exceptionally low by the severe competition which exists there; and that the rates from either Atlanta, or La Grange, to the points mentioned, are made by the Georgia Railroad Commission, and made to increase with the distance.

If, however, La Grange be entitled to a decree in this case that her rates from New Orleans shall be no higher than the rates from New Orleans to Atlanta, it is certain that Hogansville, Newnan, Palmetto and Fairburn (which are also shorter distance points than Atlanta), will demand a similar decree. The consequence will be that the rates from New Orleans to La Grange, Hogansville, Newnan, Palmetto and Fairburn will be the same; and while none of them will be higher than the rates from New Orleans to Atlanta, it will be impossible for La Grange to sell at any point between La Grange and Atlanta if the matter of railroad rates is one of controlling force. Take for instance, Hogansville, which is situated thirteen miles east of La Grange. A La Grange merchant would have to pay the same rates from New Orleans as a merchant at Hogansville would pay; and in addition thereto, the La Grange merchant

would be compelled to pay the Georgia Railroad Commission rates from La Grange to Hogansville. If, therefore, the power to compete depends entirely upon the matter of railroad rates, the La Grange merchant could not compete at any point either east or west of La Grange; and, therefore, so far as railroad rates are concerned, the La Grange merchant would not be one iota better off than he now is

CVII.

Railroad Rates Do Not Control the Destinies of Cities.

Appellant's witnesses testify with substantial unanimity that "relatively low or preferential rates to a locality, increase the population, induce the investment of capital there, and promote prosperity in every respect;" while "relatively high rates, which discriminate against a locality, decrease the population, retard the investment of capital, and reduce prosperity in every respect."

Trans., p. 287.

The present relation, which exists between the rates from New Orleans to La Grange, and the rates from New Orleans to Opelika, Hogansville, Newnan, Palmetto, Fairburn and Atlanta, respectively, has been in existence, certainly, since 1888; and it was doubtless in existence long prior thereto. It has been in existence sufficiently long, at least, to test the soundness of the theory which appellant's witnesses advance with so much confidence and unanimity.

Complainant Calloway testifies that in 1890 the population of La Grange was 3,100; while at the time he gave his testimony in this case, it was between 4,000 and 5,000. It would seem, there-

fore, that the rates of which La Grange complains have not had the effect "to decrease the population" of that place.

Trans., p. 83.

Mr. Calloway also states that La Grange has 35 or 40 good mercantile establishments; two large cotton mills; foundry; carriage factory; creamery; grist mills and planing mills; waterworks and electric light plant; two railroads; two large female colleges; and several other smaller industries.

Trans., p. 285.

It would seem, therefore, that the rates of which La Grange complains have not had the effect "to retard the investment of capital," "or to reduce the prosperity" of that place.

La Grange is situated 38 miles east of Opelika; 13 miles west of Hogansville; and 46 miles west of Palmetto. Opelika, Hogansville and Palmetto each have materially lower rates than La Grange has.

Trans., pp. 6, 34, 35.

Now if relatively low or preferential rates have the effect to "increase population," "induce the investment of capital," and "promote prosperity in every respect," we would naturally suppose that Opelika, Hogansville, and Palmetto, with their "low or preferential rates," would have far outstripped La Grange, in the race for commercial supremacy. The fact, however, is as testified to by Mr. Calloway himself, and by all of appellant's other witnesses, that Opelika's population is no more than that of La Grange, and the business industries at Opelika are substantially the same in character, and in number, as those at La Grange. Hogansville, with all her advantage over La Grange in the matter of rates, has a population of only 750; and Palmetto, with all her advantage in rates over La Grange, has no larger population than Hogansville.

Trans., pp. 285, 286.

There must be something, therefore, other than a difference in railroad rates, to account for the relative population, business industries, etc., of La Grange, Opelika, Hogansville, and Palmetto. "Exceptional sagacity and enterprise," leading to "large investments in business industries," will be found in a vast majority of cases to have far more influence than railroad rates upon the destinies of towns and cities.

CVIII.

The Commission Has No Power to Make Specific Rates.

The Commission, in one of its earliest cases, decided that it had no power to make or fix rates generally, and that its power in respect to rates was confined to determining "whether those which the roads impose are, for any reason, in conflict with the statutes."

1 I. C. C. Rep. pp. 155, 156, Thatcher v. D. & H. C. Co. et al.

In the case of C. N. O. & T. P. Ry. v. I. C. C., 162 U. S., p 197, this Court held that the Commission had no power to make or fix a specific maximum rate for the transportation of first-class freight, in less than car loads, from Cincinnati to Atlanta.

The Commission, however, declined to accept the decision of this Court in that case as a finality of the question as to the power of the Commission to make specific rates; and the case of I. C. C. v. C. N. O. & T. P. Ry., 167 U. S., 479, was brought to this Court upon a certificate of division, for the express purpose of excluding every other question from the record; and thus obtaining the opinion of this Court upon the single question as to the power of the Commission to make specific rates. This Court again decided that the Commission has no such power.

The same question was again raised and expressly decided by this Court in the same way, in 168 U. S., pp. 161, 162, I. C. C. v. Alabama Midland Railway.

In the case at bar, the Commission totally disregarded both of said decisions of this Court, and in one part of its order "recommended" that the appellees so revise their schedules that the rates charged by them from New Orleans to La Grange shall not exceed the following specific rates, viz.:

Class	1	2	3	4	5	6	A	B	C	D	E	H	F
Rates	103	88	77	64	52	42	24	31	24	20	44	49	40

Trans., pp. 50, 51.

If said "*recommendation*" is to be treated as an "*order*," it is manifestly unlawful and void, as expressly decided by this Court, in both of the two last mentioned cases cited above; for such an order is a direct attempt to make specific maximum rates, from New Orleans to La Grange.

CIX.

The Commission Has no Power to Make Relative Rates.

I have shown, in the last preceding section, that it has been twice decided by this Court that the Commission has no power to make specific rates in a direct form; as, for instance, to order the appellees not to charge more than certain specific rates from New Orleans to La Grange.

The Commission, in the case at bar, has however undertaken to fix rates from New Orleans to La Grange in an indirect form.

In one part of its order, it orders the appellees to desist from charging higher rates from New Orleans to La Grange than they contemporaneously charge from New Orleans, Hogansville, Newnan, Palmetto, or Fairburn.

Trans., p. 50.

A similar attempt was made by the Commission in the case of Southern Pacific Co. v. Colorado Fuel & Iron Co., 101 Fed. Rep., pp. 784, 785, to make relative rates; and the U. S. Circuit Court of Appeals for the Eighth Circuit said:

"Prescribing a rate from Pueblo, Col., to San Francisco, Cal., by reference to a rate that had theretofore been established by carriers between Chicago and San Francisco, involved the exercise of legislative functions *to the same extent as fixing the rate between the former points on an independent consideration* of what would be a reasonable compensation for the service." . . . . "We feel constrained to hold that the Commission exceeded its authority in this part of the order, and that it had no more power to fix a rate from Pueblo to San Francisco by relation to the theretofore existing rate from Chicago to San Francisco *than it had to fix the former rate upon an independent consideration* of what would be a reasonable charge."

CX.

The "Findings of Fact" Made by the Commission in the Case at Bar are not Entitled to be Treated as Prima Facia Evidence.

"Findings of fact" are not even *prima facie* evidence, unless the inquiry made by the Commission be conducted "on a proper basis."

162 U. S., p. 235, T. & P. Ry. v. I. C. C.

"Findings of fact" must be made "upon a full consideration of all the circumstances and conditions upon which a legitimate order could be founded."

162 U. S., p. 238, T. & P. Ry. v. I. C. C.
175 U. S., p. 676, L. & N. R. R. v. Behlmer.

"Findings of fact" must be made "in the light of all facts duly alleged and supported by competent evidence."

162 U. S., p. 238, T. & P. Ry. v. I. C. C.
175 U. S., p. 676, L. & N. R. R. v. Behlmer.

If the Commission exclude facts and circumstances that ought to have been considered, or if it "unduly restricts its inquiries," the "findings of fact" are not *prima facie* evidence.

162 U. S., pp. 235, 239, T. & P. Ry. v. I. C. C.

The inquiry made by the Commission in the case at bar was not conducted "on a proper basis;" it was not made "upon a full consideration of all the circumstances and conditions upon which a legitimate order could be founded;" and it was "unduly restricted," in its scope.

The Commission in its finding in regard to the reasonableness of the LaGrange rates based its finding upon the fact that the rates to the longer distance points are lower; and did not give "full consideration" to the fact that the only reason why the rates to the longer distance points are lower is that active and effective competition at Atlanta prevents the appellees from making them higher.

Again: If the "findings of facts" be self-contradictory, they are not *prima facie* evidence. "In other words, two absolutely conflicting propositions cannot at the same time be adopted."

186 U. S., p. 339, I. C. C. v. C., etc., Rd. Co.

In the case at bar, the proposition that the LaGrange rates are unreasonable in and of themselves is absolutely conflicting with the proposition that the appellees may continue to charge rates to LaGrange as high as the rates to the longer distance points.

181 U. S., pp. 23, 26, E. T. V. & G. Ry. v. I. C. C.

The Circuit Court erred therefore, in treating the "findings of fact" in the case at bar, as *prima facie* evidence.

Trans., p. 399.

CXI.

Even if the "Findings of Fact" can be Treated as Prima Facie Evidence, they are not Conclusive.

The fact that the Court is authorized to "hear and determine the matter as a court of equity" necessarily implies that the Court is not concluded by the findings or conclusions of the Commission.

162 U. S., p. 239, T. & P. Ry. v. I. C. C.
168 U. S., p. 175, I. C. C. v. Ala. Midland Ry.
50 Fed. Rep., 304, I. C. C. v. A. T. S. F. R. Co.
49 Fed. Rep., 180, I. C. C. v. L. V. R. Co.
37 Fed. Rep. pp. 613, 614, K. & I. Bridge Co. v. L. & N. R. R.

There is power in the Circuit Court, and the Circuit Court of Appeals "to consider and apply the evidence," and in this Court to review their decisions.

168 U. S., p. 174, I. C. C. v. Ala. Midland Ry.

It may be shown that the evidence offered in the Circuit

Court " was sufficient to overcome any *prima facie* case that may have been made by the findings of the Commission."

162 U. S., p. 195, 196, C. N. O. & T. P. Ry. v. I. C. C.

On the hearing before the Commission the complainant Calloway was the only witness introduced in his behalf.

He did not testify that the La Grange rates are unreasonable in and of themselves; nor did he testify to any fact bearing upon their reasonableness except that they are higher than the rates to the longer distance points.

The only witnesses who testified before the Commission in regard to the reasonableness of the La Grange rates were Mr. Lutz and Mr. Knott; both of whom testified that said rates are just and reasonable in and of themselves.

Trans., p. 104, 117.

In addition to the testimony of Messrs. Lutz and Knott, the appellees were, as held by the Commission itself in other cases, entitled to the benefit of the legal presumption that said rates are reasonable in and of themselves.

1 I. C. Rep., 375, Harding v. C. St. P. M. & O. R. Co.
7 I. C. Rep., 234, Brewer & Hanleiter v. L. & N. R. R.

With the exception of the fact that the La Grange rates are higher than the rates to the longer distance points, there was absolutely no evidence before the Commission to overcome the legal presumption that the La Grange rates are just and reasonable in and of themselves.

After the case got to the Circuit Court a large amount of additional testimony was taken by the appellees. Numerous traffic

experts testified that in their opinion the La Grange rates are just and reasonable in and of themselves, and they stated the reasons for the opinions expressed by them. Many additional facts were also proven in the Circuit Court which showed that the La Grange rates are reasonable. The testimony taken by appellees in the Circuit Court as to the reasonableness of the La Grange rates is hereinbefore referred to in Sections XXI to XXXII, both inclusive, and they will not be repeated here.

The Circuit Court erred in holding that the testimony submitted by the appellees was not sufficient to overcome the "findings of fact" made by the Commission; and the Circuit Court of Appeals was right in reversing the decree of the Circuit Court, and in declining to enforce the order of the Commission.

CXII.

The Finding Made by the Commission on a Mixed Question of Law and Fact is not Entitled to as Much Weight as the General Verdict of a Jury, or the General Finding of a Court.

It has been said by this Court that the question whether a rate is reasonable, is a question of "fact."

162 U. S., 196, C. N. O. & T. P. Ry. v. I. C. C.
162 U. S., 219, 227, 235, 238, T. & P. Ry. v. I. C. C.
175 U. S., 676, L. & N. R. R. v. Behlmer.
181 U. S., 28, E. T. V. & G. Ry. v. I. C. C.

It is manifest, however, that the Court did not intend to say that the question whether a rate is reasonable is one of "pure fact;" but that it is a question of fact mixed with law.

Some questions involve "pure matters of fact, unmixed with any element of law;" while other questions involve matters of fact in which are mixed certain elements of law; and the latter are known as "questions of mixed law and fact."

Bliss' Code Pldg, 208.

Thus, the question of fraud is one necessarily compounded of fact and of law.

123 U. S, 432, 433, Jewell v. Knight.

And so the questions of "negligence," and "reasonableness," are mixed questions of law and fact.

88 Fed. Rep., p. 448, Dooley v. Pease.

It has been said by this Court that "the general verdict of a jury *concludes* mixed questions of law and fact, except so far as they may be saved by some exception which the party has taken to the ruling of the courts upon a question of law."

112 U. S., p. 674, Martinton v. Fairbanks.

9 Wall., p. 127, Norris v. Jackson.

But a finding of facts made by the Commission does not "conclude" either pure questions of fact, or mixed questions of law and fact; because the Act to Regulate Commerce expressly enacts that a finding of facts made by the Commission shall be only *prima facie* evidence.

37 Fed. Rep., 613, K. & I. Bridge Co. v. L. & N. R. R.

62 Fed. Rep., 693, Shinkle, Wilson & Kreis Co. v. L. & N. R. R.

Prima facie evidence as defined by this Court is such as, in judgment of law, is sufficient to establish a fact, unless said evidence be rebutted.

6 Pet. (632), Kelly v. Jackson.

14 Pet. (347), U. S. v. Wiggins.

97 U. S., 268, Lilienthal's Tobacco v. U. S.

In a word, while the general verdict of a jury "*concludes*" a mixed question of law and fact, a finding made by the Commission is only *prima facie* evidence of the fact, and may be rebutted; either by the evidence taken before the Commission, or by the evidence afterward taken in the Circuit Court.

There is a substantial reason why Congress did not permit a finding by the Commission to have the conclusive effect of a general verdict by a jury on a mixed question of law and fact.

Every mixed question of law and fact necessarily involves matter of law; and every litigant has the right to have all matters of law decided *by the Court.*

The Interstate Commerce Commission "is invested with only administrative powers of supervision and investigation which fall far short of making the board a court, or its action judicial, in the proper sense of the term."

37 Fed. Rep., 613, K. & I. Bridge Co. v. L. & N. R. R.

While the Act to Regulate Commerce gives to findings of fact made by the Commission the effect of *prima facie* evidence, it does not give to the "conclusions" of law reported by the Commission any effect whatever.

The Commission itself concedes that its "conclusions" have no binding force.

3 I. C. Rep., p. 153, left col., Rates and Charges on Food Products.

If the Commission is not a court, and its finding on a mixed question of law and fact should be held to be as conclusive as the general verdict of a jury, it would be impossible for a party to obtain the judgment of any court upon such matter of law as might be involved in the question.

But in the case of a general verdict by a jury either party may readily obtain the judgment of the Court on any matter of law that may be involved in a mixed question of law and fact.

This may be done in one of four modes:

First: Either party may request the Court to give the jury proper instructions as to the rules and principles of law by which they are to be governed in their determination of the question.

Second: Or either party may request the Court to inform the jury hypothetically, whether or not the facts which the evidence tends to prove will, if established in the opinion of the jury, satisfy the allegation in the pleading.

Third: Or either party may request the Court to instruct the jury to find the facts specially; and then the Court will apply the law, and pronounce whether or not the facts so found are sufficient to support the averments of the parties.

Fourth: Or either party may present to the Court their propositions of law, and require the Court to rule on them.

1 Head (Tenn.) 616, 617, Whirley v. Whiteman.
9 Wall, 128, 129, Norris v. Jackson.
52 Mo., 207, 209, Fourth National Bank v. Heuschen.
19 Am. and Eng. Enc. of Law, p. 633.

But, as the proceedings before the Interstate Commission are had in advance of the proceedings in court, it is impossible for a party to ever obtain the judgment of any court upon the matter of law involved in a mixed question of law and fact, if the finding made by the Commission on that question be given as conclusive effect as is given to the general verdict of a jury.

Under the fourth section of the act of March 3, 1865, when the parties waive a jury, a general finding of the Court upon the facts has the same effect as the general verdict of a jury; and where the general finding of a Court includes a mixed question of law and fact it is as conclusive as the general verdict of a jury, except so far as the matter of law involved in the question may be saved by some exception which the party has taken to the ruling of the Court on the law.

9 Wall, 127, 128, Norris v. Jackson.

12 Wall, 297, Miller v. Life Ins. Co.

But, even where the finding of a trial court is general, either party may readily obtain the judgment the Appellate Court on any matter of law that may be involved in a mixed question of law and fact.

This may be done in one of four ways:

First: Either party may object to the admission or exclusion of evidence and require the trial Court to rule on the objection.

Second: Or either party may present to the trial Court his propositions of law and require the Court to rule on them.

Third: Or either party may ask for definite ruling by the Court as to whether all the evidence is sufficient in law to warrant a finding in his favor.

Fourth: Or either party may get the trial Court to make a special finding, which raises the legal propositions.

9 Wall, 128, 129, Norris v. Jackson.

12 Wall, 297, Miller v. Life Ins. Co.

112 U. S., 672, 673, Martinton v. Fairbanks.

When the verdict of a jury is special, or the finding of facts by a court is special, such a verdict or finding "raises the legal propositions" involved in a mixed question of law and fact, and the power of review by this Court extends "to the determination of the sufficiency of the facts found to support the judgment."

9 Wall, 128, 129, Norris v. Jackson.
12 Wall, 297, Miller v. Life Ins. Co.
112 U. S., 672, 673, Martinton v. Fairbanks.

It will be seen therefore that whether the verdict of a jury or the finding of a Court be general or special, either party can compel the separation of matter of law from matter of fact involved in a mixed question of law and fact, and demand the judgment of the Court upon so much of the question as consists of matter of law. But according to the contention of appellant the finding of the Commission on the mixed question of law and fact as to the reasonableness of a rate is conclusive on the matter of law involved in the question, and neither this nor any other Court can review the judgment of the Commission on such matter of law.

To paraphrase the language of this Court in C. M. etc., Ry. v. Tompkins, 176 U. S., p. 172, when we recall that, as estimated, over ten thousand millions of dollars are invested in railroad property, the proposition that such a vast amount of property is beyond the protecting principle which insures to every one else the judgment of the *courts* upon all questions of *law*, is one which cannot be tolerated.

Respectfully submitted,

ED. BAXTER,
Counsel for Appellees.

IN THE

SUPREME COURT OF THE UNITED STATES,

OCTOBER TERM, 1902.

No. 214.

THE INTERSTATE COMMERCE COMMISSION,

APPELLANT,

VS.

THE LOUISVILLE & NASHVILLE RAILROAD COMPANY, THE WESTERN RAILWAY OF ALABAMA, AND THE ATLANTA & WEST POINT RAILROAD COMPANY,

APPELLEES.

Appeal from the United States Circuit Court of Appeals for the Fifth Circuit.

SUPPLEMENTAL BRIEF FOR APPELLEES.

Upon the question of the finality of the decree of the Circuit Court of Appeals rendered in this cause, I respectfully submit the following cases:

Bostwick v. Brenkerhoff, 106 U. S. 4., and cases there cited.

Houston v. Moore, 3 Wheat., 433.

Beebe v. Russell, 19 How., 284.

Moore v. Robins, 18 Wall., 588.

Parcels v. Johnson, 20 Wall., 653.

Grant v. Phœnix Ins. Co., 106 U. S. 429.

St. L., I. M. & S. R. R. Co. v. Southern Ex. Co., 108 U. S. 24.

Ex. Parte Norton, 108 U. S. 237.

Mower v. Fletcher, 114 U. S. 128.

Johnson v. Keith, 117 U. S. 199.

Smith v. Adams, 130 U. S. 167.

Rice v. Sanger, 144 U. S. 197.

Brown v. Baxter, 146 U. S. 620.

Werner v. Charleston, 151 U. S. 361.

Union Ins. Co. v. Kerchoff, 160 U. S. 374.

Wabash R. R. Co. v. Tourville, 179 U. S. 322.

German Nat. Bank v. Speckert, 181 U. S. 405.

T. & P. Ry. Co. v. Ft. Worth St. Ry. Co., 12 S. W. 977.

Helch v. Reinheimer, 24 N. E. 450.

Chic. & N. W. Ry. Co. v. Andrews, 35 N. E. 617.

Bank v. Jenkins, 104 Ill., 143.

Harzfeld v. Converse, 105 Ill., 534.

Trustees v. Potter, 108 Ill., 433.

ED. BAXTER,

of Counsel for Appellees.

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Supreme Court of the United States.

No. 214.—October Term, 1902.

The Interstate Commerce Commission, Appellant, *vs.* The Louisville and Nashville Railroad Company, The Western Railway of Alabama, and The Atlanta and West Point Railroad Company.	Appeal from the United States Circuit Court of Appeals for the Fifth Circuit.

[May 18, 1903.]

The connecting roads of the appellees form the short line—496 miles in length—between New Orleans and Atlanta. The through line consists of the Louisville and Nashville Railroad from New Orleans to Montgomery, the Western Railway of Alabama between Montgomery and West Point, and the Atlanta and West Point Railroad from West Point to Atlanta.

LaGrange is on the Western Railway of Alabama, 104 miles from Montgomery. Opelika lies between Montgomery and LaGrange, and is 38 miles distant from the latter place. LaGrange and the following stations between it and Atlanta are distant from Atlanta, as follows: LaGrange, 71 miles; Hogansville, 58 miles; Newnan, 30 miles; Palmetto, 25 miles; and Fairburn, 18 miles.

Pursuant to section 13 of the act to regulate commerce, Fuller E. Calloway, a merchant of LaGrange, filed a complaint against the appellees herein with the Interstate Commerce Commission. We take from the opinion rendered by the Commission in that proceeding the following synopsis of the averments of the complaint and answer:

"The complaint alleges, in substance, that defendants are subject to the provisions of the act to regulate commerce; that rates charged by them for the transportation by continuous carriage or shipment of freights, wholly by railroad, from New Orleans, La., to LaGrange, Ga., are unjust and unreasonable in themselves, and relatively unjust and unreasonable as compared with lower rates charged by defendants for carrying the same commodities over longer distances from New Orleans through LaGrange to Hogansville, Newnan, Palmetto and Fairburn, Ga., and other localities; that defendants' said rates from New Orleans to LaGrange and said longer-distance points and other localities unjustly discriminate against complainant and others, the city of LaGrange and vicinity and traffic carried thereto, and subject merchants and dealers therein to undue and unreasonable prejudice and disadvantage, and give undue and unreasonable preference and advantage to merchants and dealers at Hogansville, Newnan, Palmetto, Fairburn and other localities and traffic con-

signed thereto; that defendants' said rates from New Orleans to LaGrange, Hogansville, Newnan, Palmetto and Fairburn give them greater aggregate compensation for the transportation of like kind of property, under substantially similar circumstances and conditions, for the shorter distance from New Orleans to LaGrange than for the longer distance over the same line, in the same direction, from New Orleans to Hogansville, Newnan, Palmetto or Fairburn; that the rates charged by defendants as aforesaid are in violation of sections 1, 2, 3 and 4 of the act to regulate commerce. The rates and distances involved are set forth in the complaint, and it is further alleged therein that the lowest rate charged by defendants from New Orleans to LaGrange yields them over 1⅛ cents per ton for each mile of haul, and that their highest rate between said points affords them nearly 6¾ cents revenue per ton per mile.

"The defendants filed a joint answer, in which they admit that the rates charged are substantially as alleged in the complaint; that their rates to LaGrange amount for each mile to 1.36 cents per ton on the lowest class of freight (D), and to 6.71 cents per ton on the highest class (1), and that the rates for the shorter distance from New Orleans to LaGrange are more than they charge for the longer distances in the same direction from New Orleans to Hogansville, Newnan, Palmetto and Fairburn; but they deny that the transportation to LaGrange, Hogansville and other points mentioned is conducted under substantially similar circumstances and conditions, and thereupon further deny that their said rates are in violation of section 4 of the statute. The defendants also deny the unreasonableness, injustice, wrongful discrimination and undue and unreasonable prejudice and preference, advantage and disadvantage, alleged by complainant under the first, second and third sections of the act. The answer contains statements of rates from New Orleans to the points in question, and to and from Montgomery, Ala., and Atlanta, Ga., showing also that the through rates to LaGrange, Hogansville and the other points mentioned are made by combination of rates to Atlanta with local rates back over the same line to Fairburn, Palmetto, Newnan, Hogansville and LaGrange; and it is further averred that the disparities in rates complained of are caused by a competitive situation at Atlanta which compels low rates to that point from New Orleans. The competitive circumstances and conditions at Atlanta are stated in the answer to be the competition of such supply markets as New Orleans, Baltimore and other northeastern cities, Cincinnati, Louisville and other Ohio River cities, and the competition of carriers from such markets to Atlanta, and to have resulted, after frequent and disastrous rate wars, in the establishment of certain relative rates from these various market cities to Atlanta, a disturbance of which would immediately lead to a repetition of such wars. Similar competitive conditions are claimed by the defendants to exist at Montgomery, Ala., through which freight passes over defendants' through line to LaGrange and the other points mentioned or referred to in the complaint, and they further assert that the present relation of rates to Montgomery and Atlanta must also, under existing circumstances, be maintained. The following extract from the answer seems to succinctly set out the defendants' position in this case:

"The rates from Atlanta to those stations, respectively, LaGrange, Hogansville, Newnan, Palmetto and Fairburn, are fixed by the Georgia Railroad Commission, and are just and reasonable. The rates from New Orleans to Atlanta are fixed by the competition between markets, and the

competition between carriers, as explained above, and are just and reasonable. The rates charged by respondents are the sum of those rates, and, therefore, respondents' rates themselves are just and reasonable. The reason that Fairburn, Palmetto, Newnan and Hogansville have lower rates than LaGrange is due alone to the fact that they are nearer to Atlanta, and not to any favoritism or discrimination on the part of the respondents."

The evidence introduced at the hearing before the Commission, in support of the complaint, consisted solely of the testimony of the complainant, which dealt merely with the discrimination alleged to exist against LaGrange in the lesser rates accorded to greater distance points from New Orleans beyond LaGrange toward Atlanta, viz., Hogansville, Newnan, Palmetto and Fairburn. Much evidence—both oral and documentary—was introduced on behalf of the railroads in support of the averments of the answer.

The various contentions contained in the complaint were sustained by the Commission, which made voluminous findings, and issued an order requiring the railroads in general terms to "wholly cease and desist from each and every of the violations of law" found and set forth in its report and opinion. The remaining clauses of the order are set out in the margin.*

The railroads not having obeyed the order, the Commission instituted the present proceeding in equity, in the Circuit Court of the United States for the Southern District of Alabama. That court sustained the order of the Commission. The Circuit Court of Appeals reversed the decree of the Circuit Court and remanded the cause, but "without prejudice to the right

*Portion of order of Commission.

It is further ordered and adjudged that said defendants, The Louisville and Nashville Railroad Company, The Western Railway of Alabama and The Atlanta and West Point Railroad Company, do more particularly cease and desist from violations of the law, so found and set forth in said report and opinion as follows, to wit:

1. That said defendants and each of them cease and desist from charging, demanding, collecting or receiving rates for the transportation of the several kinds or classes of freight from New Orleans, La., to LaGrange, Ga., which, as a whole or upon any article of merchandise, are in any respect unreasonable or unjust.

2. That said defendants and each of them cease and desist from charging, demanding, collecting or receiving the following unreasonable, unjust and unlawful rates for the transportation from New Orleans, La., to LaGrange, Ga., of articles embraced in the various classes of their freight classification, that is to say:

Classes; rates in cents per 100 pounds.												*Per barrel.*
1.	2.	3.	4.	5.	6.	A.	B.	C.	D.	E.	H.	F.
143	124	109	93	74	59	41	48	33	1–229	66	74	59

3. That said defendants and each of them cease and desist from charging, demanding, collecting or receiving rates or charges for the transportation of freight

of the Commission to proceed, upon the evidence already introduced before it, or upon such further pleadings and evidence as it may allow to be made or introduced, to hear and determine the controversy according to law."

The cause was thereupon appealed to this court.

Mr. Justice WHITE, after making the foregoing statement, delivered the opinion of the Court.

The Circuit Court concurred in the finding of the Commission, that by the exaction of the rates to LaGrange complained of, the third and fourth sections of the act to regulate commerce were violated, and, being unable to say that error clearly appeared in the finding that the first section of the act was also violated, refused to overrrule the action of the Commission in any particular.

Whilst the Circuit Court of Appeals announced its conclusions in a *per curiam* opinion, it is fairly inferable from the authorities which are cited in that opinion that the court concluded that the rates charged to LaGrange did not constitute a violation of the third and fourth sections of the act, prohibiting undue discrimination and a greater charge for a shorter than for a longer haul under substantially similar circumstances and conditions. It is also inferable from the argument at bar that the appellate court, so far as the reasonableness *per se* of the rates was concerned, ordered the case to be dismissed, without prejudice to further proceedings, because it was of opinion that in the consideration of this question

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articles from New Orleans, La., to LaGrange, Ga., which are equal to rates or charges contemporaneously in force over their railroads on like traffic carried from New Orleans through LaGrange to Atlanta, Ga.; added to local rates in force on such traffic for local service over the Atlanta and West Point Railroad back from Atlanta to LaGrange, such aombined rates having been found and held in and by said report and opinion of the Commission herein to be unreasonable, unjust, unduly prejudicial and unlawful, and so unreasonable, unjust, unduly prejudicial and unlawful to the extent of such added local charges of the defendant the Atlanta and West Point Railroad Company.

4. That said defendants, and each of them, cease and desist from charging, demanding, collecting or receiving any greater compensation in the aggregate for the transporting of freight articles from New Orleans, La., for the shorter distance to LaGranga, Ga., than they contemporaneously charge, demand, collect or receive for transporting the like kind of freight traffic from New Orleans for the longer distance over the same line in the same direction to Hogansville, or Newnan, or Palmetto, or Fairburn, Ga., the shorter being included within the longer distance.

5. That said defendants, and each of them, cease and desist from charging, demanding, collecting or receiving unreasonable, unjust, unduly prejudicial and unlawful rates for the transportation of freight articles from New Orleans to LaGrange, which are higher than aggregate rates contemporaneously charged, demanded, collected or received by them, or either of them, for the transportation of like kind of

the Commission had been in effect controlled by its finding, held to have been erroneous, that there had been violations of the third and fourth sections of the act. It was, therefore, deemed that the controversy, in so far as the intrinsic reasonableness of the rates was concerned, should not be foreclosed, but should be left for further consideration and decision upon the evidence already introduced and such additional evidence as might be taken on a further hearing before the Commission if such new hearing was desired.

Whether or not the Circuit Court of Appeals was correct in the conclusions reached by it as above stated, is the question now for decision.

The record convinces us that the appellate court correctly decided that there was no legal foundation for the contention that the third and fourth sections of the act to regulate commerce had been violated. It was and is conceded that the rates on through freight from New Orleans to Atlanta were the result of competition at Atlanta, and that there was hence such a dissimilarity of circumstances and conditions as justified the lesser charge for the carriage of freight from New Orleans

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freight from New Orleans to Hogansville, or from New Orleans to Newnan, or from New Orleans to Palmetto, or from New Orleans to Fairburn.

6. That said defendants, and each of them, in the transportation of freight articles from New Orleans, cease and desist from charging and collecting rates or compensation which subject complainant and other dealers and consignees at LaGrange, Ga., their traffic, or the city of LaGrange itself, to undue and unreasonable prejudice or disadvantage in any respect whatsoever, and also cease and desist from giving any undue or unreasonable preference or advantage to merchants, dealers and consignees at Atlanta, Fairburn, Palmetto, Newnan or Hogansville, or to their traffic or to either of such cities or localities, namely, Atlanta, Fairburn, Palmetto, Newnan, or Hogansville, as against complainant and said other dealers and consignees at LaGrange, or the city of LaGrange itself.

And it is further ordered and adjudged that said defendants be, and they severally are hereby, recommended to so revise their schedules of rates and charges that the aggregate compensation charged and collected by them for the transportation from New Orleans to LaGrange of freight articles embraced in the several freight classes shall not exceed reasonable, just and lawful class rates in cents per hundred pounds and per barrel on Class F as follows, to wit:

Class.....	1.	2.	3.	4.	5.	6.	A.	B.	C.	D.	E.	H.	F.
Rates.....	103	88	77	64	52	42	24	31	24	20	44	49	40

and that they make corresponding reductions or relatively reasonable and just charges in commodity rates, otherwise known as exceptions to class rates, from New Orleans to LaGrange, aforesaid.

And it is further ordered, that a notice embodying this order be forthwith sent to each of the defendant corporations, together with a copy of the report and opinion of the Commission herein, in conformity with the fifteenth section of the act to regulate commerce.

to Atlanta, the longer distance point, than was exacted for the haul from New Orleans to LaGrange, the shorter distance point.

The sum of the rate to LaGrange was arrived at by charging the low rate produced by competition at Atlanta, and adding thereto the sum of the local rate back from Atlanta to LaGrange. The same rule was applied to the stations between LaGrange and Atlanta, each of those stations receiving, therefore, a somewhat lower rate than LaGrange, although they were located a greater distance from New Orleans and nearer Atlanta. The sum by which the rates from New Orleans to these respective stations between LaGrange and Atlanta were lower than the LaGrange rate, was dependent upon the distance these respective stations were from Atlanta. It was shown, however, and is unquestioned, that, except in a particular to which we shall have occasion hereafter to refer, if the charge had been based on the nearest competitive point south of LaGrange—that is, Montgomery—and there had been added to the competitive rate to Montgomery the local rate from Montgomery to LaGrange and the other stations beyond, the freight rates on shipments from New Orleans to LaGrange would have been much greater than the rates now complained of as excessive. In other words, the railroads, instead of putting out of view the competition prevailing at Atlanta, when they fixed the rates to the non-competitive points, took the low rates prevailing at Atlanta as a basis and added thereto the local rate from Atlanta, the result being that the places in question were given the advantage resulting from their proximity to Atlanta, the competitive point, in proportion to the degree of such proximity.

When the situation just stated is comprehended it results that the complaint in effect was that a method of rate making had been resorted to which gave to the places referred to a lower rate than they otherwise would have enjoyed. In this situation of affairs, we fail to see how there was any just cause of complaint. Clearly, if, disregarding the competition at Atlanta, the higher rate had been established from New Orleans to the non-competitive points within the designated radius from Atlanta, the inevitable result would have been to cause the traffic to move from New Orleans to the competitive point (Atlanta), and thence to the places in question, thus bringing about the same rates now complained of. It having been established that competition affecting rates existing at a particular point (Atlanta) produced the dissimilarity of circumstances and conditions contemplated by the fourth section of the act, we think it inevitably followed that the railway companies had a right to take the lower rate prevailing at Atlanta as a basis for the charge made to places in territory contiguous to Atlanta, and to ask in addition to the low competitive rate the local rate from Atlanta to such places, provided thereby no increased charges resulted over those which would have been occasioned

if the low rate to Atlanta had been left out of view. That is to say, it seems incontrovertible that in making the rate, as the railroads had a right to meet the competition, they were authorized to give the shippers the benefit of it by according to them a lower rate than would otherwise have been afforded. True it is, that by this method a lower rate from New Orleans than was exacted at LaGrange obtained at the longer distance places lying between LaGrange and Atlanta, but this was only the result of their proximity to the competitive point, and they hence obtained only the advantage resulting from their situation. It could be no legal disadvantage to LaGrange, since if the low competitive rate prevailing at Atlanta had been disregarded, and the rate had been fixed with reference to Montgomery, and the local rate from thence on, the sole result would have been, as we have previously said, to cause the traffic to move along the line of least resistance to Atlanta, and thence to the places named, leaving LaGrange in the exact position in which it was placed by the rates now complained of.

It is to be observed that it is shown that the local charges on freight moved between Atlanta and LaGrange and the stations intermediate—all of the points being in the State of Georgia—conformed to the requirements of the Georgia State Railroad Commission.

In the report of the Commission a suggestion is found that LaGrange should be entitled to the same rate as Atlanta, because if the carriers concerned in this case in connection with other carriers reaching LaGrange chose to do so, they might bring about competition by the way of a line between Macon and LaGrange which would be equivalent to the competitive conditions existing at Atlanta. We are unable, however, to follow the suggestion. To adopt it would amount to this: that the substantial dissimilarity of circumstances and conditions provided by the act to regulate commerce would depend, not as has been repeatedly held, upon a real and substantial competition at a particular point affecting rates, but upon the mere possibility of the arising of such competition. This would destroy the whole effect of the act and cause every case where competition was involved to depend, not upon the fact of its existence as affecting rates, but upon the possibility of its arising. What the fourth section of the act to regulate commerce has reference to is an actual dissimilarity of circumstances and conditions, not a conjectural one. Of course, if by agreements or combinations among carriers it were found that at a particular point rates were unduly influenced by a suppression of competition, that fact would be proper to consider in determining the question of undue discrimination and the reasonableness *per se* of the rates at such possible competitive points. As, however, the finding of the Commission concerning unjust discrimination was predicated solely upon the conclusion that the fourth section of

the act had been violated, we may put that subject out of view. So far as the reasonableness *per se* of the rate is concerned, we come now to its consideration.

Whilst there was nothing in the evidence taken before the Commission to lend support to the finding that the rates to LaGrange were intrinsically unreasonable, in the report of the Commission considerable reference was made to facts and circumstances which it is to be presumed were upon the files of the Commission and which were deemed to conduce to the conclusion that the rates to LaGrange were unreasonable *per se*. But when the statements on this subject made in the report are considered in connection with the report as a whole and the subjects to which no reference is made in the report are recalled, we think it clearly results that every conclusion reached by the Commission concerning the unreasonableness *per se* of the rates to LaGrange rested wholly upon the error of law committed by the Commission when it decided that the railroad companies were powerless to consider the competitive rates prevailing at Atlanta and to use those rates as a basis for the charges to points within the competitive area in order thereby to give a lower rate to such points than they otherwise would have enjoyed. Thus, it was held in effect that because the competitive rate to Atlanta was not unduly low, therefore any higher charge to LaGrange, the shorter distance, was unreasonable. And the same misconception was manifested by the reasoning adopted concerning the rates to Hogansville and the other stations between LaGrange and Atlanta, since it was held that because the charges to these points were lower than to LaGrange, therefore the rates to the last named point were unreasonable *per se*. Both of these conclusions, however, but held that if the carriers elected to meet the competitive rate at Atlanta they must at once correspondingly reduce their rates to all shorter distance and non-competitive points. But such a ruling was equivalent to overthrowing the settled construction of the Interstate Commerce Act allowing carriers to charge the lesser rate for the longer than for the shorter distance, if at the further point the lesser rate was justified by a substantial dissimilarity of circumstances and conditions there prevailing, consequent upon real competition. A clause in the order of the Commission makes it clear that no independent finding as to the unreasonableness of the rates was made, since it allows the carriers to continue to charge the rates complained of to LaGrange, provided no higher rates were charged to the more distant points between there and Atlanta. The inconsistency between such an order and the conclusion that the rates to the shorter distance point were unreasonable *per se* was pointed out in *East Tennessee, Virginia & Georgia Railway Co.* v. *Interstate Commerce Commission*, (181 U. S. 1,) where it was said (p. 23):

"A decree which ordered the carriers to desist from charging a greater compensation for the lesser than for the longer haul would be in no way responsive to the conclusion that the rate for the lesser distance was unreasonable in and of itself. Such a decree would in effect authorize the carrier to continue to charge at its election a rate which was in itself unreasonable to the shorter point."

And when, in connection with the matters just stated, it is observed that the report of the Commission makes no reference whatever to any intrinsic disparity between the LaGrange rates and those prevailing at other non-competitive points between New Orleans and LaGrange, no room in reason is left to sustain the view that the Commission could have held that the rates to LaGrange were in and of themselves unreasonable, irrespective of the competitive condition prevailing at Atlanta, and the arrangement of rates which arose from it which formed the main subject of the complaint.

We conclude that, under the circumstances disclosed by the record, the Circuit Court of Appeals committed no error in refusing to enforce the order of the Commission and in remanding the case to that body for such independent consideration of the question of the reasonableness *per se* of the rates as the ends of justice might require.

It remains only to consider a special question concerning the third and fourth sections of the act, which was passed over in an earlier part of this opinion. As has been said, the complaint made before the Commission alleged a disparity and discrimination alone, because of the difference of rates between LaGrange and the points beyond to Atlanta, and the report of the Commission in effect dealt only with such alleged grievances. However, in the course of its report, it was remarked by the Commission that Opelika, which was 38 miles south of LaGrange, was a competitive point, and that if Opelika was used as the basis for calculating the rate to LaGrange, a slightly lesser rate on some articles would be enjoyed by LaGrange than was the case by basing the rate on Atlanta as the nearest competitive point. The Commission, however, would seem to have attached no great importance to the matter which it thus noticed, since nothing in the order entered by it was responsive to the suggestion. It was stated, however, at bar that in the argument of the case in the Circuit Court of Appeals that court directed the attention of the counsel of the railroads to the fact that, even if their theories of the case were sound and were approved, there was a suggestion in the report of the Commission which indicated that Opelika and not Atlanta was the proper basing point for fixing the rates to LaGrange, as thereby LaGrange would enjoy on some classes of freight a slightly lower rate than resulted from using Atlanta as the basic point. It was also conceded at bar by counsel for all parties that when this suggestion was made the counsel for the railroad companies immediately declared that such fact had escaped attention, that it would at once be brought to the notice of the railroad companies,

and a change of rates would be immediately put into effect upon that basis. And the brief of counsel for the Commission states that a modified tariff, based on Opelika, was put into operation by the railroad companies in May, 1900, immediately after the argument of the case in the Circuit Court of Appeals, and has been continued in force from that time to this, the decree below having been entered more than one year after the submission of the cause. It is, however, now insisted that the change made by the railway companies to conform to the development as to Opelika is a confession that there was error in the action of the Circuit Court of Appeals, and therefore requires that the decree of that court should be at least in part reversed. It would be, it is said, indeed dangerous to allow a railway company to exact illegal rates, and persist in doing so even after the order of the Commission had been issued, and then escape the consequences of its wrongdoing by at the last hour changing its rates in order to prevent the entry of a decree against it. The reasoning has abstract force, but its application to the case in hand is devoid of merit, since neither in the complaint made before the Commission nor in the evidence introduced for the complainant was any claim made that wrong had been done because of a combination of rates based on Atlanta instead of Opelika. Indeed, the relief sought by the complaint and that accorded by the Commission was inconsistent with the theory that the rates should be based on either Opelika or Atlanta. As the altered tariff based on Opelika had been in force more than one year prior to the entry of the decree below, the court doubtless considered it unnecessary to provide for its continuance. The record does not disclose, nor was it suggested, that any application was made to the Circuit Court of Appeals to modify its decree so as to direct the continuance of such new tariff, both parties evidently acting on the reasonable assumption that it was an accomplished fact. Under these circumstances, we do not think a formal modification of the decree of the Circuit Court of Appeals is required; and that decree is therefore

Affirmed.

Mr. Justice HARLAN dissents.

True copy.

Test:

Clerk Supreme Court, U. S